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THE SOLICITORS' JOURNAL.

LONDON, FEBRUARY 2, 1861.

CURRENT TOPICS.

The Courts of Equity will sit again on Thursday next. Considerable progress was made during last term in disposing of the causes set down for hearing at the commencement of term. The Court of Appeal got through its entire list, the Lord Chancellor having generally sat by himself, and there being thus two courts of appeal nearly always sitting. It is not improbable that before the commencement of next sittings, the expected general Order relating to oral evidence in court will be published. We believe it has been for some time past undergoing the consideration and revision of the authorities.

The Middle Temple has restored the old custom of occasional public "Readings" by benchers, which had been discontinued since the year 1680. Last term Mr. R. J. Phillimore, the reader appointed by the benchers, read in the Middle Temple Hall a paper on "Minority and Majority in England and Abroad."

Mr. John Smale, of the Chancery bar, who has been long known to the profession by his valuable reports of the decisions in the courts of the Vice Chancellor Knight Bruce and the Vice Chancellor Stuart, has been appointed to the Attorney-Generalship of Hong Kong. The appointment will afford satisfaction to members of the Chancery bar, inasmuch as there has been amongst them of late a notion that, as a body, they have been improperly and unfairly excluded from colonial appointments. Unquestionably, the Common Law bar have been, during the last two or three years, appointed to a disproportionate number of colonial judgeships; and it has been whispered about that Sir Charles Wood, the present Secretary of State for India, has expressed his unwillingness to appoint any equity barrister to the Indian bench.

Mr. Turnbull has resigned his office at the Rolls. He was appointed about eighteen months ago by the Master of the Rolls as Calendarer of the Foreign State Papers in the Public Record Office. The appointment, however, gave rise to a very violent opposition on the part of the Protestant Alliance, and two or three similar bodies, upon the ground that Mr. Turnbull's religious opinions as a Roman Catholic unfitted him to discharge the duty of making a Calendar of State Papers, some of which affected questions of importance to the religious history of this country. The entire competency in other respects of Mr. Turnbull was admitted on all hands. But this objection was urged, although comparatively by a small number of persons, yet with so much vehemence, that Mr. Turnbull resolved upon resigning an office which required the confidence of the public, of which he had been deprived by the clamour that had been raised against him. In acknowledging a letter announcing his resignation, Sir John Romilly wrote a reply which has given great satisfaction, not only to the friends of Mr. Turnbull, who are very numerous, but to all friends of civil and religious liberty. It was as follows:—

Rolls, Jan. 29, 1861.

My dear Sir,—It is with much regret that I have read your letter, resigning your present employment. I feel, however, that I cannot press you to retain a situation which subjects you to so much persecution as that to which I have inadvertently exposed you.

My regret at your resignation is, however, mainly founded on the public loss, which will, I believe, be sustained by the discontinuance of your services; nor will it be easy to find a gentleman both willing to carry on the arduous task in which you have been engaged and also possessed of the peculiar knowledge and capacity required for that purpose.

I cannot conclude without expressing the high esteem I entertain for yourself personally, and the pain I feel that any society of English gentlemen, professedly founded on religious principles, should have been found to exist in this country who have considered it consistent with the charity on which those principles are based, to endeavour, by *ex parte* statements, and confidential canvassing, to remove from an employment for which he is peculiarly fitted a gentleman so honourable and trustworthy as I consider you to be.—I am, yours very sincerely,

W. B. Turnbull, Esq. JOHN ROMILLY.

Mr. Turnbull was for many years a member of the Scottish, and he is now of the English, Bar; but he is mainly known as an accomplished black-letter scholar and archæologist.

TAXATION OF SUITORS.—No. IV.

HOW FAR OFFICERS OF THE LAW SHOULD RECEIVE FEES TO THEIR OWN USE? HOW FAR THERE IS AN ANNUAL ESTIMATE AND ASSESSMENT OF FEES TO MEET ANNUAL WANTS? HOW FAR THE FEES ARE PROPERLY COLLECTED AND ACCOUNTED FOR? AND WHAT WOULD BE THE STATESMANLIKE METHOD OF DOING THE WORK?

Hitherto we have been occupied in investigating the abstract rules which should govern the Legislature in providing for the maintenance of courts of justice. We now touch upon questions of fact, on which, to a great extent, we are without the means of knowledge, and which cannot be thoroughly inquired into without the assistance of the body of solicitors (particularly of those in the country), and probably only by a Government commission. Thoroughly to deal with these topics we want, at the outset, a list of all the law courts and offices of the kingdom—an enumeration, that is, of all the channels, down to the minutest rill, through which the streams of justice flow from the one great fountain-head, the Crown. Where to find such a list we know not. The Law List does not contain it. In the annual judicial statistics we have a return of about thirty borough, hundred, and local courts; some of them transacting business to a considerable amount. But many important tribunals are not mentioned there. One such, for instance, is the Court of Passage at Liverpool. This court is regulated by at least five Acts of Parliament. But then, unfortunately (and we should also, speaking as legists, say improperly), these statutes (except 25 Geo. 3, c. 43) are treated as local and personal acts, and therefore are not printed in the public statute-book. We have hunted up these Acts, and find that the court is maintained by the Corporation of Liverpool, the officers paid by salary, and the fees received for the borough fund. Most of these local courts are maintained by fees taken to the officers' own use. In all cases where a salary is guaranteed to the judge, we think it will always be found charged (either directly, or in default of sufficient fees), on some local, never on the consolidated fund.

The Court of the Stannaries is a good instance. This court is now regulated by the 6 & 7 Will. 4, c. 106. The salaries of the vice-warden, registrar, &c., are paid half out of the revenues of the duchy, and the other half out of the fees and out of a tax of a farthing in the pound on all minerals except tin raised in the district. The fees appear to be collected in money. The officers

account to the registrar; the registrar to the vice-warden; and the vice-warden to the auditor of the duchy. The Duchy Court of Lancaster should also be particularly mentioned. It is regulated by 13 & 14 Vict. c. 43. The fees are regulated by the Chancellor and Vice-Chancellor; and are collected in money. The registrar accounts once a-year to the Vice-Chancellor, and his fees are paid to a fee-fund. The district registrars we believe retain their fees to their own use. The salary of the Vice-Chancellor we assume is paid out of the duchy funds. The fees accounted for in 1859 appear to be about £4,000.

Of the smaller tribunals we know nothing. There are also many offices established for legal purposes not immediately connected with courts, such as the Middlesex and York register offices, the position of which we have not investigated.

A cursory investigation of the arrangements of the local courts would require a chapter to itself. Here a novelty for the financial management of courts has been introduced in the establishment of treasurers; a scheme we believe to be a bad one. Indeed, we think, throughout the local court system, the influence of place making and political party serving motives may be traced. The whole structure wants a careful and impartial survey. The treasurers should be abolished, and fees should be collected in these, as in all other courts, by special stamps. The banking department of these and all other courts we propose to deal with in a future article. We understand a committee or commission of county court judges has lately been considering this subject. With every respect for those learned judges, we think that they were not the right persons for the task; we should wish rather to see financiers than lawyers engaged on it. And we feel convinced that one system of taxation and banking under one central authority should be applied to all the courts of the kingdom. The fusion of legal jurisdiction is quite another question. But we cannot doubt that one Legal revenue board, and, what would follow as a matter of course, one system, should exist for the whole kingdom.

With reference to the superior courts of law and equity, and to the Admiralty and Probate Courts, full details of the mode of collecting the taxes will be found in Mr. Lake's evidence before the recent commission on Concentration of Courts (p. 59). All the taxes (or fees, if the false name is still to be used), except those of the common law courts are collected by fee stamps. What justification can be urged for the continuance in the Common Law Courts of the vicious and condemned system of collecting the tax through officers acting as bailiffs for the consolidated fund, it passes us to conceive. And yet the common law establishment was remodelled in 1852 (stat. 15 & 16 Vict. c. 73), whereas the sentence of denunciation was pronounced by the House of Commons Fees Committee, in their reports of 1848 and 1849. The fee stamp system first tried in Ireland (Stat. 1 & 2 Geo. 4, c. 112), and introduced by Lord St. Leonards for the English Chancery Court, in 1852 (stat. 15 & 16 Vict. c. 87) has been found so simple and perfect, that it is most difficult to refrain from attributing sinister motives to the re-enactment of the money system for the common law establishment. We believe that, taking all the common law courts together, there are above 100 persons who receive cash as tax collectors for the Treasury, and that there is no kind of audit on behalf of the public. As to many of the fees, from their nature, there could be no efficient audit; as every practitioner will know. In Chancery, in the old money taking times, an affidavit was made of the amount of fees received. In common law no such thing is required. The Treasury is to open its mouth and shut its eyes, and take what the century of officers will send it. All the obvious evils pointed out by the Fees Committees have been here perpetuated. The time of 100 officers is wasted in account keeping — their honesty tampered with — a cloud of suspicion is inevitably thrown round them. Small as the check is, we have heard that more than one subordinate has absconded; that no security is given, and that their deficiencies have never been made good. The case of Swabey in another court we need not refer to; nor to the defaulters among official assignees.

The second report of the Fees Committee (8th May 1848) contains these resolutions:—

9. That in taking of fees the following things are to be provided for:—
   1. That no more is levied than is absolutely required for the purpose for which fees are imposed.
   2. That all fees imposed shall be actually levied.
   3. That the whole amount levied is applied for the purposes for which the fees are levied.

10. To promote the first object it is important to consolidate offices as much as possible, and to discontinue useless offices and forms of proceeding.

11. To promote the 2nd object, it is essential to provide a test of payment, so that no person should be able to escape the payment of the fees imposed.

12. To promote the 3rd object, it is essential to provide a check, whereby the total amount levied may be paid into the fee fund.

13. To promote all three objects, it is essential that fees should be consolidated, so as to be made as few in number as possible.

14. That the fees should be levied with as little inconvenience to the suitor as possible.

These most wise resolutions are contemptuously set at naught in the present system of assessing and collecting the tax on common law suitors. Principles deliberately adopted by the Legislature, whatever they may be, should, as far as possible, be applied to every court of justice and law office, great or small. The remuneration of officers by fees has, since 1833, been emphatically condemned. It should no longer be allowed anywhere; and the authorities concerned in the preparation of all such Acts as, for instance, those governing the duchy court, in our opinion, are open to censure for contravening a rule so distinctly pronounced by the Legislature as that of 1833. Again, no more fees, say the committee, should be annually levied than are required. But see with what triumphant defiance the Court of Chancery treats this rule. Not only since 1833 have £83,557 more fees been assessed than expended, but this excess has been levied while the Court has had in hand an accumulation of surplus fees which it has invested in £201,000 stock. Not only this, but the Court has also had in hand accumulated banking profits, to the benefit of which, on all sides it is admitted, the suitors are entitled, and (being the fund now proposed to be used for building the new courts) to the extravagant amount of a million and a quarter. A tax on suitors is, so far as it goes, a denial of justice. A tax on suitors is also a tax paid for liberty to employ the legal profession to obtain the suitor's rights. Is it not discreditable in the highest degree that such over taxation as this should have occurred? We know, well, it could only have been perpetrated in ignorance or thoughtlessness, or for want of some functionary whose duty it was to prevent the imposition of burthens so gratuitous and grievous. But that our management of legal taxation is ignorant is all we are contending for. We object to the continuance of such a state of anarchy. The taxation of suitors is really the affair of State financiers, and not a judicial one. For our clients, the over-burthened suitors, we must insist on an annual estimate of needs, an annual assessment, and a House of Commons ministerial responsibility.

The mere fact that there exists in the Court of Chancery a fund of above a million and a quarter, (a sort of foundling and *filius nullius*—the fund B. of the concentration commission), glad as we are to have the money for new courts, is all sufficient to overwhelm the present judicial financial system (or no-system) with disgrace and confusion. This fund was also

gathered together, doubtless, in ignorance. If it had been got together on purpose, it would have been so much plunder; and the Court, in the eyes of a financial judge, would have been found red-handed.

The financial and banking mismanagement of the great funds in the hands of this Court, were considered by us at length some months since. As bearing on the question of the taxation of the suitor, we may remark that, had this fund B., which in 1842 (when the Six Clerks Office was abolished) amounted to £910,000 Stock, been then applied to the purchase of terminable annuities to defray the immense compensations then awarded, it would have been unnecessary to tax the suitors to defray those compensations, which in 1842 were £46,509 a-year. Even if it could have been thought wrong to sink any of the capital of this fund in the purchase of terminable annuities, we have next to point out that had the surplus interest of this fund (which, from 1842 to 1852 averaged £30,000 a-year), been at once applied in aid of the fee fund, instead of deferring that very proper step till 1852—the sum of £30,000 a-year would have been annually saved to the three generations of over taxed suitors, who formed the population of the Court of Chancery during those ten years. By the monstrous system of excessive taxation of which we are complaining, this fund was kept under accumulation till 1852, when it reached its present amount of £1,291,629 Stock, and its income of £40,000 a-year was then all in one swoop applied to the reduction of future fees.

A glance across the Channel to Ireland is often useful. While the suitors in the English chancery have been taxed to an amount greatly exceeding the needs of the court, in Ireland, as we might guess, the consolidated fund has been unduly paying them. By the 4 Geo. 4, c. 61, ss. 1 & 2, the Irish Lord Chancellor might have rightly adjusted the tax there to the needs. But from the Government finance accounts we see that the consolidated fund had in 1859 to provide £32,000 to meet the deficiency arising from the insufficient taxation of the chancery suitors. We suppose these calls in aid led the Treasury to appoint, as we see they did, the late Mr. Wilmot Seton and two officers of the Irish Court, commissioners to investigate the matter. This report was printed in 1859, and laid before Parliament. The commissioners recommended (p. 5) as follows:—

"We are of opinion that payment of fees in money should be discontinued in this, as well as in every other department of the court, and that a moderate stamp duty should be substituted."

These commissioners were evidently altogether unaware of the House of Commons' reports upon fees, and in particular, they do not seem to have perceived the importance of the questions we have discussed, as to the proper incidence of taxation. Neither do they seem to have thought of looking to the finance arrangement of the court as the most legitimate mode of raising a revenue towards its support. These shortcomings have arisen from the piecemeal system hitherto pursued in dealing with legal taxation and finance, under which every court has been considered and regulated separately, or rather, has been expected to consider and regulate and purge itself. Had there been any office of law revenue and finance connected with the Treasury, such shortcomings could not have happened; and this Irish episode of our story shows that these matters can only be dealt with rightly in the wholesale, and must fail when dealt with separately, and in the retail. In the Irish common law courts, all fees are now collected by stamps, under the 13 & 14 Vict. c. 114.

The conclusions we have arrived at on the subjects mentioned at the head of this article, are already denoted. They are that the collection of all fees for every court and office, should be by a specially issued stamp only. That money should on no pretence ever pass from suitor or solicitor to the officers of court; that the gross income should be received intact; and that the officer's salaries should always be paid to him, as to all the courts belonging to the State, by a Law tax department of the Treasury. That there should be an annual review, and budget, and re-imposition, and re-assessment of law taxes, so that such injustice as that in Chancery of the ten years 1842 to 1852 should be prevented; and so that at no time too much tax should be imposed on any suitor. That the tax should as much as possible be an ad valorem tax, and not a poll tax, and that all this should be so arranged as to involve some annual vote by Parliament, and thus insure full parliamentary responsibility for a most important public duty, which now so far as we can see is left to do itself as it best may. The whole results should appear in the annual issue of judicial statistics.

PROCEEDINGS IN CHANCERY "CHAMBERS."

We insert this week a copy of the return referred to under this head in a former article (*ante*, p. 195). Some further suggestions as to the jurisdiction by summons at chambers may still be offered. Should any extension of such jurisdiction be determined on, there would be no difficulty whatever in carrying it out; it not being necessary since the passing of the Act of 18 & 19 Vict. c. 134, to apply to the Legislature for the purpose of carrying into effect any alterations under the statutory jurisdiction by which the Court of Chancery is empowered to make orders in a summary way. The Lord Chancellor, under sect. 16 of that Act, has power by general order to declare what applications shall be made at chambers.

When the jurisdiction at chambers was introduced in cases under the statute 36 Geo. 3, c. 52, s. 32 (for payment into court of legacies), and the Trustee Relief Act (where the fund was not more than £300) it was thought that, under the Lands Clauses Consolidation Act also in cases where the amount of the fund was not more than £300, applications by summons might be entertained at chambers, although that mode of proceeding under the last mentioned Act is not expressly authorised by the consolidated orders of the Court defining the jurisdiction at chambers; see order 35, rule 1; but in the case of *Clarke's devisees*, 6 W. R., p. 812, Vice-Chancellor Kindersley decided that the application must be made by petition. Now, the expense of a petition is not inconsiderable, and ought to be saved when possible; and is there any reason why these applications should not be made at chambers? Indeed, we think that the limit as to amount should be much extended if any limit at all should be retained. The smallest amount of costs of a petition of the very simplest character is £10; and half the expense or even more might be saved by an application at chambers.

The "Trustee Act, 1850," (13 & 14 Vict. c. 60, s. 38), gave liberty to carry into the master's office a statement of facts, and to verify it, and the master was to certify as to the right to a vesting order; and by 15 & 16 Vict. c. 80, s. 36, all powers given to the masters were transferred to the judge in chambers; but as the Court now makes orders under this Act without a reference to chambers, on proper evidence of the facts being given, this provision is useless. We think that, as suggested in our former article, in small cases at any rate, an original summons should be allowed for a vesting order of real estate, and also of choses in action, and the other matters embraced by this Act.

As regards proceedings under the Trustee Relief Act, if a summons be allowed, it would be an original summons, there being no matter created by the affidavit on which the money is paid in to support any other procedure. In the case of a party becoming absolutely entitled to a fund, the expense of a petition, and making out his title thereto, would in most cases,

probably, amount to £20, or £30; whereas the cost of a summons would be less than half the amount.

We think that a mistake must have been made in 23 & 24 Vict. c. 38, s. 14, in giving liberty to apply by original summons for an order to advertise for creditors under Sir George Turner's Act. A motion or petition of course, which the Act also authorises, is the cheaper mode by more than half, as will be seen by the following particulars of the costs (taken on the higher scale) as to each method of proceeding, viz.:—

By motion of course.

	s.	d.
Instructions for affidavit	6	8
Drawing, folios 3	3	0
Engrossing	1	0
Attending to be sworn, and paid oath (in country)	9	2
Filing and office copy...	3	6
Brief afft. for counsel...	3	4
Fee to him	10	6
Attending him and court	13	4
Paid order	5	0
	£2	15 6

By original summons.

	£	s.	d.
Instructions for affidavit	0	6	8
Drawing, folios 3 ...	0	3	0
Engrossing	0	1	0
Attending to be sworn, and paid oath (in country)	0	9	2
Filing and office copy	0	3	6
Instructions for summons	0	13	4
Preparing same	1	1	0
Stamp on original ...	0	5	0
Attending to issue ...	0	6	8
Engrossing duplicate	0	2	0
Stamp thereon	0	5	0
Attending to file.....	0	6	8
Copy for chambers...	0	2	0
Attending summons	0	13	4
Paid order	1	0	0
	£5	18	4

The subsequent costs are the same in each case.

The expense of a petition of course is still less than that of a motion of course. The costs are as follows:—

	£	s.	d.
Instructions for affidavit	0	6	8
Drawing, folios 3	0	3	0
Engrossing.....	0	1	0
Attending to be sworn and paid oath (in country)	0	9	2
Filing and office copy	0	3	6
Drawing and copy petition	0	4	0
Stamp thereon for order	0	5	0
Attending to present and for order	0	13	4
	£2	5	8

The subsequent provisions in the 14th section are, however, most valuable, viz. the power given to executors or administrators to apply by summons to stay proceedings at law against them, which in many cases will be a great saving of expense, particularly as the summons would only be the common summons in a pending matter; and also the power given to the judge on application of the executor or administrator, to direct that particulars only of any claims shall be certified by the chief clerk without adjudication, thus getting rid of the costs of proof which, in the majority of cases of this sort, is unnecessary, as all the executor requires to establish by the proceeding is, that he has paid all the creditors, and that there can be no future claim upon him. There must be a special form of advertisement to give effect to the last-mentioned provision of the Act; and a general order will be required to authorize this. The 37th rule under the 35th of the Consolidated Orders of the Court, directs that the advertisement for creditors or other claimants, shall be in a form similar to the form in schedule L., with such variations as the circumstances of the case may require; and that the creditor or claimant must come in and prove his claim. The *proof* cannot be dispensed with except by a form of advertisement issued under a general order of the Court. It is suggested that such form should be in the alternative, so as to allow the executor or administrator the option of advertising for particulars only of all claims, or of those of limited amount (say under £5), or for creditors to come in and prove in the usual way. In the two former cases, the executor or administrator might be at liberty to have the particulars directed by the advertisement to be furnished to him, or entered at chambers.

It would be a great saving of expense if the advertisements in suits might be assimilated to this in form, as far at least as small claims are concerned. The particulars only of the majority of such claims are all that would be required. The advertisement should, however, be so worded as to give liberty to require strict proof of any claim if necessary. Under the 42nd rule of the general order above referred to (the 35th), creditors whose debts do not exceed £5, need not attend at the adjudication unless required. It would be a further improvement if it were not necessary for them to *prove* their debts unless required.

The jurisdiction at chambers might with advantage be extended to hearings on further consideration, of cases commenced by summons. As the order for administration of personal estate is now made at chambers, there does not appear to be any valid reason why, in ordinary cases, the order on further consideration should not also be made at chambers.

The application under 18 & 19 Vict. c. 43, enabling valid settlements, or contracts for settlement, to be made by male infants of 20 years of age, and females of 17, with the sanction of the Court of Chancery, might be made by original summonses, instead of the more expensive method by petition, which is now necessary. Proceedings under private Acts of Parliament for investments or purchases, might also be commenced in the same way.

The judges have the same power and jurisdiction conferred on them by 15 & 16 Vict. c. 80, with respect to chamber business, as when sitting in open court (see s. 13), and they have also full power to direct by general order what business shall be disposed of by them in chambers (see s. 26). We hope, therefore, to see many of the improvements we have suggested carried into effect, and increased facilities thus given for the dispatch of the business of the Court at much less expense to the suitor.

The Courts, Appointments, Promotions, Vacancies, &c.

COURT OF QUEEN'S BENCH, WESTMINSTER.

(Sittings in Banco before Mr. Justice WIGHTMAN, Mr. Justice CROMPTON, Mr. Justice HILL, and Mr. Justice BLACKBURN.)

Jan. 29.—*The Queen* v. *Hayward*.—In this case a rule had been granted, calling upon W. W. Hayward to show cause why a *quo warranto* should not be exhibited against him, to show by what authority he exercised the office of clerk of the peace for the city of Rochester, upon the ground that he had been duly removed by the council of that city, who had lawful power so to do.

Cause was now shown against the rule. It appeared that Mr. Hayward had been appointed on the 5th of August, 1851, but in 1860 a charge had been made against him that, being a trustee, he had sold out some money in the funds, and applied a considerable portion to his own private use. The fraud was committed before the passing of the Fraudulent Trustee Act, and was disclosed in some Chancery proceedings, and upon the proof of the fraud the Master of the Rolls dissolved the partnership which Mr. Hayward was then carrying on with another gentleman as an attorney. The council of Rochester also took the matter up and appointed a committee, and required Mr. Hayward to attend before them, but he refused to attend, as he considered the council had no power in the matter. The council then removed him from his office of clerk of the peace of the city, but it was now contended that the right of removal was not in the council, but in the recorder. The recorder also had taken the same view of the case, for he had refused to allow the gentleman whom the council had appointed to act in Mr. Hayward's place. The question, therefore, was whether the power of removal was in the coun-

cil or in the recorder. It appeared that by the statute of the 1st of William and Mary, sec. 1, cap. 21, the clerk of the peace for the county was appointed by the *custos rotulorum*, and he held his office so long as he well demeaned himself, but the power of removing him in case he should misdemean himself was, by the 6th section of the Municipal Corporation Act (5th & 6th William 4., cap. 76) given to the justices in quarter sessions. The justices in quarter sessions were to hold a judicial inquiry, and had power either to suspend or discharge the clerk of the peace, in which case the *custos rotulorum* had power to appoint another. By the 101st section of the Municipal Corporations Act, on the petition of the town-council, the Crown could grant a right of holding a separate quarter sessions to a borough, and appoint a recorder; and the town-council had power to appoint a clerk of the peace for the borough, who was to hold his office during good behaviour. The 105th section then defined the jurisdiction of the recorder, who was to hold courts of quarter sessions for the borough, to be a court of record, and to have cognizance of all crimes and offences," and all matters whatsoever cognizable by any court of quarter sessions." The last clause, it was contended, was large enough to convey to the recorder the same jurisdiction, as to the removal of the clerk of the peace for the borough, as was exercised by the county sessions in the case of the clerk of the peace of the county.

Mr. Justice CROMPTON said there was some doubt about the matter, but the authorities in this court were all in favour of the defendant. The court could not say the question ought not to be argued.

The counsel who appeared in support of the rule, were not called upon, and the rule was made absolute in order that the argument might take place on the return to the writ.

Rule absolute.

Jan. 29.—*Martin* v. *Hirons.*—A rule was moved for in this case calling upon the Sheriff of Middlesex to show cause why he should not pay the defendant the sum of 10*s.*, and also calling upon two of his assistants, named Mott and Mayhew, to show cause why an attachment should not issue against them for extortion.

It appeared that the defendant had been taken on a *ca. sa.* by two assistants of the Sheriff of Middlesex, and one of them, named Mott, demanded of him the sum of 5*s.*, which he said was his regular fee. The defendant said he never heard of such a thing as to make a man pay for being taken into custody. Mott said the money went to the office for searching, and that if he didn't pay it, it would cost him a guinea, or more, when he got to prison. The defendant not having any money, was taken to Southampton-street, where he borrowed it, and paid the 5*s.* The other man, Mayhew, then demanded 5*s.* as his caption fee, in addition to the cab fare, and said that he could take the coat from the defendant's back or the watch from his pocket if he did not pay it. Under these threats the defendant was induced to part with his money. The statement of the defendant was corroborated by the affidavits of other persons. There was authority for the present application in the case of *Blake* v. *Newborn*, (17 L. J. Q. B. 216), where it was held that if a sheriff's officer is guilty of extortion the party complaining may call upon the sheriff to show cause why he should not refund the excess, and upon the officer to show cause why an attachment should not issue against him under the same rule.

The Court granted a rule to show cause.

COURT FOR DIVORCE & MATRIMONIAL CAUSES.

(Before the JUDGE ORDINARY.)

Jan. 28.—*Boynton* v. *Boynton.*—The petitioner in this case, Mrs. Boynton, had obtained a verdict that her husband, the respondent, had been guilty of adultery and cruelty, and the Court had thereupon decreed a dissolution of the marriage. A petition had since been presented for an order respecting the settlement of the property, and another for the custody of the child. Counsel for Mr. Boynton suggested that it would be expedient to postpone the hearing of the petition as to the settlement, until the other petition as to the custody of the child was ready for hearing. The petitioner's counsel said that if the hearing were postponed the Court might make an interim order as to the property. Before the marriage the wife had property which produced an income of £575 a-year. By a post-nuptial settlement two-thirds of the sum was settled to the separate use of the respondent, and one-third was settled upon Captain Boynton for life. Upon the death of either the survivor was to have the whole for life. If, therefore, the lady died before an order was made, Captain Boynton would take the whole for life. The trustees of the fund had, since the suit was instituted, transferred it to the Accountant-General of the Court of Chancery.

The JUDGE ORDINARY.—The Court of Chancery has much greater facilities than I have for dealing with questions of this kind. However, as the jurisdiction is given to me I must exercise it. If the Legislature find out that it is badly executed they must transfer it. His lordship asked what the petitioner had called herself since the decree, and upon being informed that it was not known what name she ought to take, said there was a difficulty about her resuming her maiden name; for if a lady called "Miss" were to be seen walking about with a son it would be rather awkward.

The case was ultimately ordered to stand over until the petition as to the custody of the child was ready for hearing.

COURT OF PROBATE.

(Before Sir C. CRESSWELL.)

Jan. 30.—*In the goods of Elizabeth Freeman, deceased.*—In this case a motion was made for probate of the will of Elizabeth Freeman. It appeared that after her death the will was handed to the attorney who had prepared it. When he read it over he discovered an interlineation, and knowing that it was not there at the time when the will was executed, and that it would be inoperative, he incautiously erased it. He had made an affidavit of these facts.

Sir C. CRESSWELL.—Does he state how long he has been a member of the profession? I should presume either that he was a perfect novice or that he was superannuated, otherwise he would never have taken such a liberty with a will. You may take the grant.

The undermentioned gentlemen were called to the Bar on Saturday, the 26th instant:—

Lincoln's-inn.—Deane Parker Pennethorne, Esq., B.A., Cambridge (Certificate of Honour, first class); Percy Simpson, Esq., M.A., Cambridge; Arthur Giles Puller, Esq., M.A., Cambridge; Joseph Wm. Dunning, Esq., M.A., Cambridge; George Worthington, Esq.; Charles Robert Fletcher Lutwidge, Esq., B.A., Cambridge; Paul Panton, Esq., B.A., Cambridge; Edmond Robert Wodehouse, Esq.; Charles Collett, Esq.; Horace Davey, Esq., M.A., Oxford; John Liddon, Esq., M.A., Oxford; Arthur Dixon, Esq.; Charles Synge Christopher Bowen, Esq., B.A., Oxford; George Randall Johnson, Esq., B.A., Cambridge; Bernard Cracroft, Esq., M.A., Cambridge; Wm. Halfhide Allen, Esq., M.A., and B.C.L., Oxford; Frederick James Quick, Esq., B.A., Cambridge; Robert Smith, Esq.; Angelo John Lewis, Esq., B.A., Oxford; Charles Stewart, Esq.; Mark William Hunter, Esq., B.A., Cambridge; Henry Augustus Clavering, Esq.; and William John Belt, Esq., M.A., Cambridge.

Inner Temple.—John Walter Tyas, Esq.; Thomas Neilson Underwood, Esq.; Charles William Mackillop, Esq.; Henry William Franklyn, Esq., B.A.; William Henry Mellor, Esq.; Thomas Green, Esq.; Felix Hargrave Hamel, Esq.; Henry Brooks, Esq., B.A.; John Barker Thornber, Esq.; Henry Goldwyer, Esq.; and John Martineau, Esq., B.A.

Middle Temple.—Thomas Henchman Buckerfield, Esq.; Henry Michael Dunphy, Esq.; Martin Harcourt Griffin, Esq.; George William Paul, Esq.; Alfred Richards, Esq.; and Thomas Henry Goodwin Newton, Esq., B.A.

Gray's-inn.—Richard C. Rogers, Esq.; Timothy O'Brien O'Feely, Esq., LL.D.; and Julian Emanuel Salomons, Esq.

The office of Queen's Coroner has become vacant by the death of Mr. Arthur Bloxam Corner.

Mr. F. Lloyd has been appointed to act as judge and session judge at Dharwar, in the East Indies, in the room of Mr. M. A. Coxon, deceased.

Mr. Frederick Baker, of Derby, has been appointed a perpetual commissioner for taking the acknowledgments of deeds by married women, for the county of Derby.

Mr. Alfred Laird Estlin, of Somerton, Somersetshire, has been appointed a commissioner to administer oaths in the High Court of Chancery.

Mr. James Greenhalgh, jun., of Bolton-le-Moors, Lancashire,

has been appointed a perpetual commissioner for taking the acknowledgments of deeds by married women, for the county of Lancaster.

Mr. Thomas Harrison, jun., 5, Walbrook, London, has been appointed a London commissioner for administering oaths in common law.

Mr. John Waddington Mann, York, has been appointed perpetual commissioner for taking the acknowledgments of deeds by married women, for the city of York and Ainsty, of the same city.

Mr. George Moore, Warwick, has been appointed perpetual commissioner for taking the acknowledgments of deeds by married women, for the county of Warwick.

Mr. Benjamin Hadley Sanders, of Bromsgrove, Worcestershire, has been appointed a perpetual commissioner for taking the acknowledgments of deeds by married women, for the county of Worcester.

Mr. Robert Slaney, of Newcastle-under-Lyme, has been appointed a perpetual commissioner for taking the acknowledgments of deeds by married women, for the county of Stafford.

Mr. William Smith, of Staines, and No. 11, Staple-inn, Middlesex, has been appointed a perpetual commissioner for taking the acknowledgment of deeds by married women, for the county of Surrey.

Recent Decisions.

EQUITY.

RACTICE—ANSWER OF A COMPANY—EVIDENCE.

Wadeer v. *The East India Company*, M. R. 9 W. R. 251.

One result of the numerous changes which have been made of late years in the practice of the Court of Chancery has been to alter very much the object and use, and, therefore, the general character of Answers. Under the old practice, wherever a defendant could not plead, demur, or disclaim, he was compelled to answer, and in such cases, the issues involved were almost necessarily of pure fact; the answer was intended, however, not only to oblige the defendant to disclose the general nature of his defence, but also to obtain from him a discovery, so as to enable the plaintiff to obtain as far as possible complete justice. The plaintiff was entitled, not merely to rely upon the defence set up in the answer, as being that against which he was to direct his evidence in the suit, but he was also entitled to treat statements of facts in the answer as evidence against the defendant; whilst a defendant or co-defendant was not entitled to use an answer as evidence for the defence. The Chancery Amendment Act of 1852 (15 & 16 Vict. c. 86), introduced a great change into the practice of the Court in respect of answers; and the Orders about to be issued relating to oral evidence no doubt will alter still more the character of answers, so as to reduce them very much to mere instruments of pleading. The rule of law which at present enables the examination and cross-examination of parties to suits has gone very far to curtail the utility of discovery by the process of the Court of Chancery, so that it is becoming every day less used for that purpose. The use to plaintiffs, therefore, of answers, as supplying evidence is also becoming less; and the tendency of modern practice is, certainly, very much to reduce them to the mere use of a pleading. The contrary may, no doubt, appear to be the case, from the fact that the Act of 1852, while it abolishes the old rule, which always required an answer upon oath from every defendant (except those labouring under disability), and, on the other hand, allowed the defendant voluntarily to put in an answer, even when not required, makes the answer evidence not only for the plaintiff, but also, upon notice being given, for the defendant, and even as between co-defendants, [on this point the present practice of the court is laid down in detail in *Wright* v. *Edwards*, 7 W. R. 193]. The Act enables a defendant to add to his answer to the plaintiff's interrogatories any statement in support of his own case that he thinks fit. It may, therefore, appear that the modern practice is very much to increase the use of answers for the purpose of evidence; and in many cases, no doubt, it is. But generally, even in them, this circumstance is accidental, and arises rather from a convenient and collateral use of answers than from their intrinsic character. Even in the case of a voluntary answer the object of the defendant is not prematurely to disclose his evidence, but to place a statement of facts in the nature of a pleading upon the record. The same remark applies to the case of a compulsory answer, so far as the defendant has added thereto a voluntary statement. The first and sole object generally of answers so far as they are voluntary regards the pleading in a suit. The Chancery Amendment Act of 1852, for the sake of saving expence, allows that all answers on oath, when they have served their purpose of pleading, may, so far as they contain statements of fact, be used as evidence in the cause. As soon, however, as the new general Order on evidence comes into force defendants will probably reserve much of the information which they are in the habit of volunteering in their answers until they are orally examined before the Court; except so far as it may be desirable to have it appear upon the record that the plaintiff had the information at the earliest possible stage of the cause.

Wadeer v. *The East India Company* affords an illustration of the distinction between an answer when regarded as a pleading and when regarded as evidence. On the hearing of this cause upon motion for a decree, Sir John Romilly, M.R., refused to allow the answer under seal of a company, to be read as evidence on its behalf, upon the ground that it was not sworn; his Honour, however, allowed it to be read by the company as a matter of pleading, and he would probably even as evidence against the company.

REAL PROPERTY AND CONVEYANCING.

EQUITABLE MORTGAGE—PRIORITY OF CHARGES.

Cooke v. *Wilton*, 9 M. R. 220.

In this case it appeared that a lady prior to the 29th June, 1858, had mortgaged property by deposit of title deeds. On the 29th of June, 1858, a judgment was registered against her. Two days afterwards the plaintiffs, without notice, as they alleged, of the judgment, paid off the equitable mortgagees and took the securities. Subsequently, a legal mortgage was executed to the plaintiffs. It was held that the legal estate of the plaintiffs, thus acquired, had reference back in point of date to the equitable mortgages; and that the plaintiffs were entitled to use the legal estate so as to cover all advances to the mortgagor subsequent to the date of the deposits, on the same securities, made by them *bonâ fide*, and without notice of other charges. As the evidence of the plaintiffs having had notice of the judgment appeared to the Court to be defective, it followed that the judgment creditor was postponed.

SOLICITORS' ACT—COSTS IN LUNACY.

Re Cumming. Ex parte Turner, L.J., 9 W. R. 213.

A case of the highest importance to solicitors of the Court, involving a question of the operation of the Attorneys and Solicitors Act of last session, was decided by the Lords Justices on the 17th of November last. The working of this measure is necessarily attended with some anomalies Amongst others, the provision with respect to costs in lunacy is a very singular one. It entirely changes the rights of the parties at the time of the passing of the Act, and gives a preference to the solicitor over the other creditors of the testator. It is impossible, nevertheless, that the relief which was intended to be afforded by the Legislature could have been otherwise bestowed; and the urgency of the remedies required is proved by the increasing number of applications to the courts under the 28th & 29th clauses.

In the case before us, the applicant, a solicitor petitioning under the 29th section of the Act, was held to be excluded from the benefit of its provisions by the operation of the limitation clause (sec. 29), in matters relating to lunacy. The former clause (sec. 28), which gives to the courts the power of making solicitors' costs a charge upon recovered property, enacts that no order shall be made in any case where the right to recover is barred by any statute of limitations; but the 29th section expressly fixes a period. The proviso is, "That it shall not be lawful for the court or judge to make any such order, but within six years next after the right to recover such costs, charges, and expenses shall have accrued." The question here was, when did the right to recover accrue? It was argued, with great force, that the period from which the right accrued could only be the completion of the taxation; but Lord Justice Knight Bruce considered that the six years must be computed *from the date of the death of the lunatic*. Lord Justice Turner said he should not express any opinion on that subject; but of this he was clear—that it should have accrued at the period *when the court declared the costs*,

charges, and expenses to have been properly incurred. He would not say the right did not accrue upon the death of the lunatic; but he was satisfied that, *at latest*, it accrued at the date of the order. There was an undoubted right to recover the costs the moment it was ascertained that they were properly incurred on behalf of the lunatic's estate. The strongest argument for supposing time to run from the death of the lunatic is to be found in the language of the 29th section. In the present case, it turned out that, according to either mode of computation, the solicitor's claim was barred; but it happened that the solicitor was also a mortgagee of a fund in court as a security for his costs. The mortgage-deed recited that the two married daughters of the lunatic were entitled, as tenants in common in remainder expectant on their mother's death in the fund; and their husbands, by the same deed, purported to convey to the solicitor the freehold property to which they were or should be thereafter entitled in right of their wives; and also assigned to him the fund. A receiver having been appointed, and considerable sums having been paid into court, it was held that the effect of the deed was to give Mr. Turner a security upon the interest of one of the husbands, in right of his wife, in property of which the lunatic was tenant in fee or tenant in tail—she never having barred the estate tail—and that he was entitled to deduct the costs from the rents accrued since the lunatic's death. It was argued that this was, in fact, a claim by a mortgagee for past rents; but the L. J. Turner said he considered them rather to be outstanding rents which had never got home to the mortgagor, and that the mortgagee was entitled to recover in respect of them.

COMMON LAW.

COUNTY COURTS—CONCURRENT JURISDICTION OF SUPERIOR COURTS—9 & 10 VICT. c. 95, s 128.

Adams v. *The Great Western Railway Co.*, 9 W. R., Exch., 254.

By 9 & 10 Vict., c. 95, s. 128, the right of a plaintiff to sue in the superior court, without danger to his costs in case of success, on the ground that the County Court had jurisdiction in the matter, and that the proceedings should have been taken therein, is preserved in certain cases, one of which is, "where the plaintiff dwells more than twenty miles from the defendant." This section, and the particular branch of it now referred to has been discussed under every conceivable aspect. Thus, with regard to the mode of calculating the prescribed distance, it has been held that it is to be as the crow flies; that is to say, in a straight line from house to house, without reference to the actual route by which a journey from one to the other may be performed (*Lake* v. *Butler*, 3 Ell. & Bl., 92): and in a subsequent case, this rule of measurement was held (it may be incidentally remarked) to be applicable to all cases where the distance between two places is, in an Act of Parliament made the basis for some enactment (see *Jewel* v. *Stead*, 6 Ell. & Bl., 350). Again, it has been held that the meaning of the proviso is that the plaintiff has his election if the defendant's *dwelling place* be more than twenty miles from the place where the plaintiff dwells, although the defendant's *place of business* may be within that distance (*Peterson* v. *Davis*, 7 D. & L., 109). And it has been decided that where a person has a permanent "dwelling" in one place, he cannot be said also to dwell at another place where he has only temporary lodgings (*Macdougall* v. *Paterson*, 11 C. B., 755); although, on the other hand, where the plaintiff has more than one permanent dwelling—one within the twenty miles of the defendant's dwelling, and the other beyond that distance—it has been decided by the Common Pleas, (in opposition to an earlier case in the Queen's Bench), that the plaintiff is entitled to select the more distant of his residences as that in which he dwells (see *Butler* v. *Ablewhite*, 6 C. B. N. S., 1254; *contra Bailey* v. *Bryant*, 28 L. J., Q. B., 86). To these judicial interpretations we must add one that brings us to the case now under discussion, viz., that a *corporation* is liable to be sued in a county court (a proposition which may be thought hardly to require an express authority), and that a corporation "dwells" within the meaning of the 128th section at the place where its business is carried on (*Taylor* v. *Crowland Gas Co.*, 11 Exch., 1). This last rule of construction seems to leave nothing for discussion with regard to the case of corporations generally; but the defendants in the case now under discussion happening to be a railway company, it was contended that their dwelling must be held to be in every place where their business was carried on; that is to say, at every station. This, if held correct, would have deprived the plaintiff of his costs, as he dwelt less than twenty miles from a station on the defendant's line of railway; but the Court held that the *head office* is the dwelling of a railway company, and that office only. This decision seems to follow the principle of *Macdougall* v. *Paterson*, 11 C. B., 755, above cited, viz., that for the purposes of this section the plaintiff cannot have more than a single "dwelling place,"—a doctrine which agrees with that persisted in by the Common Pleas in *Butler* v. *Ablewhite*, but inconsistent with that of the Queen's Bench in *Bailey* v. *Bryant*. Consequently the present case may be considered as a declaration by the Court of Exchequer, that they will adhere to the view of the former court should the question be directly raised before them for decision.

We may further remark that in a case since *Butler* v *Ablewhite* the Court of Queen's Bench avoided either overruling or confirming their previous view in *Bailey* v. *Bryant* by deciding the case then before them on the narrower ground that the plaintiff had only *one* permanent dwelling, because his other residence was subservient to the purposes of his business (*Kerr* v. *Haynes*, 29 L. J., Q. B., 70). It does not appear how they would have held had the plaintiff been possessed of two residences, each of them used indifferently for the purpose of dwelling in.

FUGITIVE SLAVE CASE—HABEAS CORPUS, DIFFERENT KINDS OF—AT COMMON LAW AND UNDER STATUTE.

Ex parte Anderson, 9 W. R., Q. B., 255.

With reference to this case—now watched with such universal interest—it may not be uninteresting briefly to review the legal bearings of the writ, by virtue of which the authorities at Canada are directed to bring up Anderson before the Queen's Bench at Westminster.

The writ of *habeas corpus*, though usually applied to vindicate the liberty of the subject, is also used for other purposes; for there are several writs all called generally writs of *habeas corpus*, which have distinctive additions corresponding to their several objects; and it has been recently held that the writ *cannot* issue in a general form, but must be for a specified object recognized by the law (see *Benns* v. *Morley*, 2 C. B. N. S. 116). Thus the *habeas corpus ad respondendum* is sued out in order to remove a prisoner confined by the process of any inferior court, to charge him with a new action in one of the superior courts: though, since the abolition of arrest on mesne process, and the almost complete desuetude of borough and other inferior courts, this species of the writ could scarcely occur in practice. Then there is the *habeas corpus ad satisfaciendum*, which is for the purpose of charging in execution a prisoner confined elsewhere than in the prison of the court out of which the process of execution issued (see 15 & 16 Vict. c. 76, s. 127). And again, there is the *habeas corpus ad testificandum*, to remove an execution debtor confined in prison, in order to give evidence in some court of justice (see 16 & 17 Vict. c. 30, s. 9: and 19 & 20 Vict. c. 108, s. 31). Another species of the writ is the *habeas ad faciendum et respondendum* (otherwise called an *habeas cum causâ*), which issues to remove civil proceedings from an inferior to one of the superior courts—together with the defendant therein, if in custody.

The most common and by far the most important species of the writ, however, is the famous *habeas ad subjiciendum*, used for the deliverance from illegal confinement. This writ may be directed to any person who detains another in custody, and commands him to produce to the Court whence the writ issues, the body of the prisoner, with the date and cause of his caption and detention. It may issue from any of the superior courts of law or from the Court of Chancery, and either in term time or vacation; and it *runs into all parts of the dominions of the Crown*; for, (says Blackstone), "the king is at all times entitled to have an account why the liberty of any of his subjects is restrained wherever that restraint may be inflicted."

The writ is so far a writ of *right*, and not to be denied to any applicant, that it is necessary only to make application for it supported by affidavits establishing to the satisfaction of the Court some *probable cause* which the party has to be delivered (see *per* Vaughan, C. J., *Bushel's Case*, 2 Jon. 13), and when awarded, the only return which can be made is to bring up the body of the prisoner if alive.

The proceedings on this writ are partly regulated by the common law and partly by two statutes—the 31 Car. 2, c. 2, (usually called the *Habeas Corpus Act*), and the 56 Geo. 3, c. 100.

In neither of these Acts, however, is any mention made of the Colonies, though privileged places and the Channel Islands are expressly brought within their provisions; and it is

therefore apprehended that the authority for issuing the writ to the Canadian tribunals must be exclusively sought in the doctrines of the common law, and that the *statutable* practice under the writ has no application.

For an issue of the writ to a colony such as Canada, there seems to be no sufficient *precedent*; but the course which has been taken by the Queen's Bench (while it must command the approval of the feelings of all) seems amply justified by the principles of the English law, if not supported by express authority. And, particularly, it is in strict accordance with the proposition of Blackstone above referred to, the value of whom, as an authority, is great (as remarked by Lord Denman in the *Canadian Prisoners Case*, 9 A. & E. p. 780), because it shows the general opinion that prevailed at the time when he wrote his commentaries.

It cannot, however, be denied, that none of the instances cited at the bar in support of the application for the writ are much in point. The case in Burrows (*Rex.* v. *Cowle*, 2 Burs. 836). was an application in reference to a "certiorari," directed to the Mayor and Corporation of *Berwick*. Carus Wilson's case (7 Q. B., 984) decided, it is true, that the writ runs to Jersey and, probably at common law; or, in other words, that the statutes *quoad hoc* are declaratory merely; but then Jersey and Canada cannot be considered as both of them colonies in the same sense of the word. The same remark may be made with regard to Crawford's case (13 Q. B., 613), which shows only that the Isle-of-Man is in the same position with regard to this writ as Jersey. As for the Canadian prisoner's case (case of *Watson and others*, 9 Q. B., 731) that was an *habeas corpus*, directed to an *English* gaoler, who detained the prisoners at Liverpool under a warrant from the Canadian government; a very different matter from the one in hand. And, lastly, as to the recent case of *Exparte Lees* (1 E. & E., 878), in which a writ of *habeas corpus* was applied for to be directed to the authorities at St. Helena, to bring up the body of a prisoner then undergoing three years' imprisonment, for an assault with intent to do grievous bodily harm;—in the first place, the application was *refused*; and, in the next place, the Court (under the presidency of Lord Campbell), made an observation very pertinent to the case now proceeding. After remarking that some old precedents of writs issued out of this court to the French dominions of our early English sovereigns (probably alluding to the case of *Duke of Gloucester*, imprisoned at Calais, 1389) had been cited to show that such writs might now lawfully issue, his lordship has continued: "No precedent of any such proceeding with respect to a dependency like St. Helena for several centuries was brought before us; and it was not at all explained in what manner our writs of error, *certiorari*, or *habeas corpus, could be enforced* in such dependencies." It may be hoped, however, that this difficulty will not present itself to the Canadian mind, or that it will willingly waive the solution in *favorem vitæ*.

Review.

Commentaries on the Common Law; designed as introductory to its study. By Herbert Broom, M.A., Barrister-at-Law. Second edition. London. 1861.

The appearance of a second edition of Mr. Broom's Commentaries on the Common Law is a phenomenon which deserves some examination and remark. Mr. Broom holds the office of reader in common law to the inns of court, and the Commentaries being used as a text-book in the course of study established by the Council of Legal Education, give us some insight into the character of the preparation for the bar designed by that body. The institution of the readerships by the inns of court about ten years ago, resulted from the conviction that the inns of court were not adequately fulfilling their duties towards the public and their students in preparing the latter for the bar; and, in respect to the mode of preparation then in vogue, that it was too purely practical and technical, being deficient in the higher and more philosophical branches of law. A third motive may have influenced many in supposing that the expensive mode of preparation by a private course of practice in the actual business of law in a pleader's, or in a conveyancer's, or solicitor's chambers, might be wholly or in a great measure superseded by a system of public lectures and examinations. The design of supplying a philosophical and theoretical knowledge of law is partly carried out by the lectures on the science and history of jurisprudence and on the civil law, which certainly offer what could not previously be obtained; while the more practical knowledge which it was supposed the Council of Legal Education could adequately supply, may be fairly represented in the matter of common law, by the work of the reader on that subject, now before us. We proceed, therefore, to examine it rather with the view of judging how far it combines scientific exposition with practical information, and is generally calculated to effect the object for which we presume it was intended, of conveying a sound and enlightened knowledge of law to a class of students from whom the profession in the highest branches of its practice and in its highest offices is supplied.

The title "Commentaries on the Common Law," though certainly not too large for the purpose thus designed, must, we find in the performance, be accepted with great reservation, or rather with an exception of nearly everything which would be generally expected under that title. The book, in fact, treats only of the constitution, jurisdiction, and procedure of the common law courts, and of the actions and remedies enforceable therein; comprising besides, if not within, this description of the contents, chapters on contracts, on torts, and on the criminal law. The method of the work seems to be to avoid any approach to scientific or theoretical exposition, and to expound didactically the precise rules of the law throughout the scope of its province, with merely so much of coherence as is sufficient to link them together in some sort of association or sequence. "Municipal law," we are told at the outset, "comprises the rules which have been laid down for the guidance of the community, to which its members must, if they would avoid penal consequences, necessarily conform." We proceed to read the rules which we are to obey. The reconciliation on moral or constitutional grounds of our obedience with our conceptions of liberty and reason we suppose is left to the jurisprudential department of legal education. The only account of common law we find is that "it is composed of two elements or materials, the *lex scripta*, and the *lex non scripta*. The *lex scripta* comprises the statute law of the land." Having studied English law with the assistance of Blackstone and Lord Coke, we have hitherto held, and shall still continue to hold, the old fashioned notion that common law and statute law represent essentially different conceptions; but those who study law under Mr. Broom seem likely to hold new views on this and on many other points.

However, we are not detained beyond the perusal of the above two passages in the regions of definition and principles, but plunge at once into the more safe and congenial wilderness of specific statute, and case law. The bulk of the work, which runs to about one thousand pages, is made up of citations of cases and verbatim excerpts from judgments and statutes, in the well-known patchwork style so familiar to English law writers, and in which the compiler of the "selection of legal maxims," and the "Practice of the County Courts," has had some experience. It alternates from the broadest generalities to the most hair-splitting differences, according to the mere haphazard course of decisions, without any regard for a complete and even treatment. We do not wish to disparage this style of writing when applied to its proper object; still less would we underrate the reading and research which it betokens. In a work intended strictly for professional purposes, it is justifiable and indispensible; the most condensed and accurate notes of the law being there required, editorial remark or comment is a work of supererogation, and the substantial interest which impels the reader in his search for the latest decisions, overcomes any repugnance to the literary style. But in a work intended for students, who are beginners only in law, and who are possibly conversant with the highest ranges and literature of physical and moral science, some more philosophical and methodical, or at least logical, method of treatment might be expected, and would surely be acceptable. It may be thought expedient by the Council of Legal Education to attempt instruction in the most minute and technical subtleties of the law, and to send forth their students ready armed for the actual warfare of their profession; but would it not be better, in such case, at once to familiarize them with the well-established and trustworthy text-books? Why should new and special works be presented to them, unless some new and appropriate system is to be adopted for their education? Mr Broom excuses the omission of the law of landlord and tenant from his work on account of the existence of an excellent work on the subject by Mr. Smith. A like reason would dispense with his treating at all of an action at law, of the law of contracts, or of mercantile law; for on all these subjects Mr. Smith has left equally excellent and accurate treatises.

The commentaries, after the preliminary statements of the

elements of the common law to which we have already alluded, enters upon an historical sketch of the courts of common law, and explains briefly their procedure and jurisdiction. Rights of action and their remedies are then treated of. Mr. Broom here discourses at great length on the old verbal quibbles of *damnum absque injuriâ*, and *injuria sine damno*, as the test of determining a valid right of action. *Damnum* he defines as "damage capable in legal contemplation of being estimated by the jury." But this definition begs the whole question; for all instances cited of *damnum* not actionable consist of damage not legally capable of being estimated by the jury. Again, he lays down the position that *injuria sine damno* may be actionable; which is an unusual way of putting it, if not a wrong one. He maintains this position by excluding "nominal damages" from *damnum*, at a sacrifice of his definition of that word above given; since nominal damages are capable in legal contemplation of being estimated by the jury, and, what is more, must in law be assessed by them. Here again we prefer adhering to the usual phraseology to following Mr. Broom. "Nominal damages," according to the late Mr. Justice Maule, "mean a sum of money that may be spoken of, but that has no existence in point of quantity." And as "a peg to hang costs upon," their distinctive character is of material importance. The truth is, such a scholastic analysis of a right of action into *injuria* and *damnum* is quite unsubstantial, and never assisted anyone in advising upon a case. All injuries or infringements of a right are actionable; some injuries infringe the right directly, and are proved by the injurious act itself; others are proved by the injury or infringement consequent upon the act, which would not otherwise be injurious. This is the only distinction in substance; and the real difficulty represented by the pedantry respecting *damnum sine injuria* is in tracing the connection between the act and its consequences. Is there a link of cause and effect which the law will recognise?

Mr. Broom finds no difficulty in the concise division of causes of action into those *ex contractu* and those *ex delicto*, translating the latter term by the phrase "independent of contract." Two lines are sufficient for him to set forth this extensive and primary classification. Philosophically speaking, however, it may be much doubted whether any such precise distinction can be drawn, and practically speaking, whether there is any value in it. At any rate the line of demarcation is very dubious and uncertain. An unsophisticated student might be inclined to ask whether a breach of contract is not a *delictum* or tort, and what is the essential difference between the obligation to compensation for damages arising from a tort of this nature and any other tort; also whether an action for money received to the use of the plaintiff, where paid in mistake, or obtained tortiously or by fraud, is not independent of contract, and how it comes to be classed among transactions which distinctively depend upon consent. To questions of this nature Mr. Broom's work affords no satisfaction; yet they are of a kind which the student must necessarily encounter, and, if a faithful student, cannot conscientiously pass over. Mr. Broom's philosophy does not extend beyond the limits of statutes and judicial decisions, and so far is legally safe; but questions of this nature are wholly beyond the province of the tribunals, however philosophically their judgments may be framed. The dictum of a judge may be the *ne plus ultra* of wisdom; but there are some topics which he cannot discourse upon. Courts of justice lay down principles in the form of maxims and positive rules, in order thereon to found their judgment in the case before them; they cannot proceed to discuss the connection of principles and their coherence in scientific form. This is beyond their province, because it can have no application to the matter in judgment. Mr. Broom is content to record the practical principles established by the courts. To construct the pure science of principles from these materials is the province of the student of science—a province which he ignores.

Passing on to the chapter on Torts, will any person, except the most thoughtless student, be satisfied with the following parliamentary definition:—"A tort is described in statutory language as 'a wrong independent of contract.' It involves the idea, if not of some infraction of law, at all events of some infringement or withholding of a legal right, or some violation of a legal duty." Yet this is all the general foundation he will find here laid for deducing and comprehending the detailed doctrines on the subject. Mr. Broom proceeds to classify torts as—1. The invasion of some legal right. 2. The violation of a public duty productive of damage to the plaintiff. 3. The infraction of some private duty, likewise productive of damage to the plaintiff. Such classification is founded on merely empirical grounds, which are quite valueless; for if the violation of a right is established, it is quite immaterial what is the character of the wrongful act which has occasioned it. Moreover, the classification is unsound, for the latter class consists chiefly, if not exclusively, of obligations arising out of contract, and perhaps is wide enough to include all contracts; and a breach of contract is actionable without actual damage, or, according to Mr. Broom, is an actionable *injuria sine damno*. Under the head of torts we find bailment and all its varieties treated of. We had always supposed with Blackstone, and other great lawyers who have treated of bailments, that transactions of this kind were matters of contract; and, indeed, here we have the authority of the recent case of *Legge* v. *Tucker* (1 H. & N. 500), to show that an action on a bailment is substantially founded on contract, even though the declaration is framed in tort upon the duty imposed by the contract. As a recent decision holds that an action for breach of the common law duty of a carrier is not an action of contract (*Tattan* v. *Great Western Railway Company*, 29 L. J., Q. B., 184), we may find some ground for Mr. Broom treating the law of carriers under this head; but as carriers are at liberty to make any reasonable contracts, and generally avail themselves of this mode of avoiding their common law duties, and as most questions relating to carriers now arise upon the contracts thus made, it seems to us that this subject also would more appropriately follow the common usage, and be treated as a contract. Mr. Broom is certainly the first writer who has treated ejectment as a mere action of tort, amongst which he classes it, notwithstanding the effect of it is only upon the land, and imposes no obligation on the defendant, and notwithstanding it is exceptional to most of the general rules relating to actions and procedure which he has previously expounded. The old fiction of entry and ouster, which would have given him some colour for so doing, was abolished by the Common Law Procedure Act, and as he has omitted all mention of real property in his commentaries on common law, we think he might more appropriately have omitted ejectment also, instead of assigning to it this unusual position.

It is impossible in our present limits to criticise this work in detail, and in the few observations above made, we have chosen rather to judge it according to its pretensions than on the footing of an ordinary text book, to which, however, it more nearly resembles in style. The statements of the rules of law and of the decisions seem on the whole to be accurate and clear, notwithstanding an unfortunate tendency, not unfrequent in lawyers, to disguise common sense by an artificial and technical mode of exposition. The authorities cited in the foot-notes are extremely copious, and we have no reason to doubt they are very complete.

The account given in the preface of the nature and object of this work is so peculiar, that the writer must be allowed to state it in his own language:—

"This work has been written with a view to filling what has long appeared to me a void in legal literature, its aim being to present explanatory comments on the law, illustrated by cases, selected in sufficient number and with sufficient care, to enable the reader to pursue for himself in detail the matters debated or touched upon in the text. In the choice of topics for discussion, I have been guided in part by an examination of standard treatises, but yet more materially by an experience of three years, devoted almost exclusively to the delivery of lectures upon the leading branches and departments of our common law. Whilst thus engaged in tracing out its principles, and indicating its practice, my attention has been perpetually directed to points of difficulty or interest, imperatively needing elucidation, which had previously escaped my notice; on all such points which, as they presented themselves, were from time to time scrupulously noted down, I have in the ensuing pages attempted more or less fully to throw light."

It seems superfluous to remark that a person capable of taking a large and scientific review of law, would not unexpectedly run his head against points of difficulty and interest in the blindfold manner described; but would be familiar with their exact whereabouts and position, and with all their limiting conditions and circumstances. The account of the choice of topics here given we can well believe, for it seems to have been guided chiefly by the mere arbitrary and unfettered discretion, which a lecturer, in dealing with students, is at liberty to exercise. As to the want of explanatory comments on the law illustrated by sufficiently numerous or carefully selected cases, whether the alleged want be positive or comparative, we beg totally to differ from him. Are there no works on procedure, practice, contracts, torts, and criminal law, more

full and trustworthy than Mr. Broom's scanty chapters? What we do indeed want are works which shall present the law to students with accuracy, and, at the same time, upon broad scientific principles which shall recommend themselves to their reason and common sense, leaving the details of law to be elaborated in practice. Commentaries on English law worthy of the nineteenth century have not yet been written. Mr. Broom attempts no more than an indoctrination of his disciples with the plain letter of the law. It is true that he arrogates a scientific character to his work; but, in common with a large class of law writers, wholly misconceives the true nature of science. "If it be true," he writes, "that law is really worthy to be called a science; if it be true that *lex est ratio mensque sapientis ad jubendum et ad deterrendum idonea*; if further, we are justified in affirming that *potius ignorantia juris litigiosa quam scientia*; is it, indeed, vain or inexpedient to hope that a sound knowledge of legal principles may gradually be desiderated by, and spread amongst, the educated classes of this country? Is it futile or unwise to predicate that much and enduring good would thence result? As regards myself, whose main incentive to the preparation of these commentaries has been a desire to facilitate the attainment of such end, the consciousness of having done so—in any the slightest degree—would amply compensate for past labours." In the preface to the present edition, he adds his "earnest hope that these commentaries may aid in the progress of legal education, and the advancement of legal science." From these passages we infer that the writer's conception of legal science is as the mere voice of despotic authority commanding and terrifying its subjects, or as the familiar acquaintance with the rules of law, which serves a man to guide his affairs with safety and without litigation.

Juridical Society.

ON SOME ERRORS IN LEGISLATION ILLUSTRATED BY THE STATUTES RELATING TO JOINT STOCK COMPANIES.

A paper on this subject was lately read at a meeting of the Juridical Society, by Mr. NATHANIEL LINDLEY, one of the secretaries of the Society. It was as follows:—

A long study of the law relating to companies has convinced me that its unsatisfactory state, both past and present, is to a great extent attributable to a disregard by the Legislature of a few important principles established by writers on jurisprudence and legislation; and it will be my endeavour in the present paper to point out the errors which I conceive have been committed. I am induced to enter upon a criticism of the enactments relating to companies by the reflection that those enactments have on the whole failed to establish the law upon a satisfactory basis and to bring it into a satisfactory state, and by the further reflection that nothing is more calculated to lead to future improvement than a careful and dispassionate examination of causes of past failures.

Parliament has dealt with companies in two ways: it has done its best to suppress them altogether, and finding that impossible it has endeavoured to regulate them. In both cases the Legislature has acted with a view to the public weal, and in both cases it has committed grievous errors.

Let us consider the attempt to suppress companies, and the various modes in which this attempt has been made.

In the early part of the last century, as is well known, a statute was passed for the purpose of preventing the voluntary subscription of capital by numerous individuals with a view to its employment for their common profit. I do not stay to consider whether the schemes afloat in 1719 were laudable or not; even if they were not, even if they were all bubbles and swindles, the proper remedy was very different from that to which the Legislature had recourse.

The reasons for condemning the principle of the Bubble Act are, as I conceive, as follows:—

1. Because it is no part of the business of a Government to protect persons, capable of taking care of themselves, from the ruinous consequences of their own deliberate acts.

2. Because it ought not to be assumed by a Government that it is a better judge of what is for the benefit of its adult and sane subjects than they are themselves.

3. Because any attempt to prevent the commission of fraud on some persons, by prohibiting them and all others from engaging in what, apart from fraud, is unobjectionable, is invariably productive of more harm than good.

4. Because the only means of effectually preventing fraud in the getting up and management of companies is to require publicity and to make an example of those who are proved to have been guilty of fraud in any particular case.

Now, what is the principle on which the Bubble Act proceeded? Simply this: that because many people had been and might again be swindled and ruined by the promoters and directors of companies, therefore, there should be no companies at all. As well might the Legislature have said that because many people have been and may again be cheated, at cards, there shall be no card playing, at least, for money; or because many people have been and may again be unhappily married, all marriages shall be unlawful. Surely that is not the way to legislate for grown up intelligent men. The Bubble Act added one more to the list of offences, the existence of which is solely attributable to a ridiculous and cruel law. Socially and morally, wherein is it wrong for a number of people to combine their capital for the attainment of profit to themselves? and, admitting that such combinations are powerful for evil as well as for good, it is a clumsy expedient to treat them all alike in order to make sure of suppressing those which are disapproved. What should we say of a farmer, who, because his crops had suffered from some particular insect, were resolutely to set to work to destroy every insect on his farm? He would himself be the first to confess his folly, after it had been pointed out to him that many insects do him no harm and much good.

The Bubble Act, however, has been long since repealed. But it must not be supposed that when the Legislature repealed that Act, the principle on which it was founded was acknowledged to be erroneous, and was for ever abandoned. So far from this being the case we find the old leaven still at work; to it must be attributed the efforts made to compel every company to submit its proposed plan of operations either to the officers of the Crown, or to a Parliamentary committee; and to it also must be attributed the long and bitter, though ultimately unsuccessful, struggle against limited liability. It is not my purpose on the present occasion to discuss the comparative merits of limited and unlimited liability; all that I am desirous of doing is to protest against the notion that it is the duty of a Government to interfere to prevent persons from making contracts which affect those only who enter into them. For nearly a century and a half, from 1719 to 1858, this principle has been deliberately violated; and it has been assumed to be for the benefit of the public at large that speculation should be restrained by force. I say by force because it is by force only that the Legislature can secure obedience. Punishment in some form or other is the means whereby alone laws can be enforced; and the ultimate test of the goodness of the principle of every law has long since been shown to be this: is the evil against which the law is directed, one which it is expedient to endeavour to suppress by compulsion by public authority? If the answer be in the negative, then, however great the evil, the cure for it must be sought elsewhere than at the hands of the lawgiving power. Tried by this test every law having for its object the suppression of companies must be condemned. As long, however, as this test is neglected, as long as fancy and feeling are appealed to on the question whether this or that ought to be prohibited by law; as long as it is taken for granted that a law is the cure for every ill arising from objectionable conduct, as long as a Government is deluded by the notion that it stands in the same relation to the governed as a parent to his child; so long will the laws of human nature be violated, and legitimate freedom of action be more or less hurtfully fettered.

Instead of attempting to suppress companies, and of waging war with those who desired to better their position in life by the employment of their capital, an enlightened Legislature would have done nothing save to so modify the law as to render justice attainable by and against the associated members. A sensible, but non-paternal, Government would have devised some means by which companies might sue and be sued in ordinary courts, and would have passed a severe law to punish those guilty of fraud and malpractices, and would then have trusted the people to take care of their own interests as best they might.

It must not, however, be forgotten that companies might always be formed with the sanction of the Crown or of the Legislature. This, it is true, prevented the Bubble Act from being so intolerably oppressive as it otherwise would have been; but the necessity of obtaining from the Crown or Legislature special permission to do that which it ought to have been lawful to do without such permission, was in itself a great evil. Special permission to do a thing ought never to be required unless what is sought to be done is something which is in gene-

ral prejudicial. Within the limits set by the test before alluded to, people should be left free to act; and it is only when they seek, for some exceptional reason, to pass beyond those limits that special leave to do as they wish should by law be necessary.

No doubt the notion was that by requiring the projectors of companies to apply to the Crown or Legislature, a check would be put on rash speculation; and it may be admitted that much fraud was thereby prevented. But, on the other hand, it must be remembered, that by requiring the sanction of the Crown or the Legislature to every scheme demanding more capital than a few individuals could furnish, a very serious check was put on the employment of capital by the unwealthy; and it not only seems to be, but is, unjust to say that two or three rich men may engage in any transactions they like, but that 100 comparatively poor men shall not do the same. Moreover I hesitate not to assert that upon the whole it is detrimental and not beneficial to the public to be compelled to obtain leave, before trying to increase their wealth in their own way. Time was, even in this country, when it was thought advisable that no book should be published without being first approved by some official; and it is even now thought proper in some countries to prevent people from moving from one place to another without previously obtaining the leave of the Government. All such restrictions on free action are, on the whole, extremely prejudicial, although it cannot probably be truly said of any of them that they never do good by averting harm. No company of course ought to have power to coerce other people until such power has been specially conferred upon it; but it is obvious that a law prohibiting the formation of companies without the special license of the Crown or the Legislature cannot be justified by any such principle as this.

The objections here made to the necessity of applying for charters or Acts of Parliament, for authority to do that which it ought to be lawful to do without special permission, are not in any way based on considerations of expense; at the same time it is obvious that the expense and delay of obtaining a charter or Act of Parliament seriously aggravate the evil of having to procure it.

I trust that I have said enough to show that the law prohibiting the formation of companies, otherwise than by charter or by special Act of Parliament, was founded upon principles which cannot be supported; and I pass now from the errors committed in legislating against companies, to the errors committed in legislating for them.

Here two great mistakes have been made. First, there has been no unity of plan; and secondly, there has been a great deal too much enacted. In addition to these, there are other minor faults discoverable in the statutes relating to companies, and in particular there is in most of them a deplorable want of clear and precise expression; but this fault, although practically of the greatest consequence, is one on which I do not propose to enlarge.

With respect to absence of unity in plan. In legislating for companies, Parliament never seems to have considered what was required to make the law suitable to the wants of the public; and yet a little attention paid to this point would have done more than anything else to render legislation successful and easy.

Before proceeding further it is necessary shortly to notice the evils against which it was necessary to provide, when it was determined to alter the law relating to companies.

First and foremost were the rules as to parties to actions and suits, which rendered it impossible either for companies to obtain redress themselves, or for individuals to obtain redress from them.

Secondly, there was the rule which enabled the separate creditors of a firm to levy execution on the partnership goods.

Thirdly, there was the rule that the creditors of a firm could have recourse for payment to any member exclusively.

Fourthly, there was the rule which prevented partners suing each other at law.

And fifthly, there was the rule that a partnership was dissolved as to all the members by whatever dissolved it as to one of them.

The first thing to be done was to prevent the application of these rules to companies; one simple enactment would have been sufficient for this purpose; all that was required was to provide some method whereby companies could be incorporated as a matter of right and not of favour, and by some cheap and simple process, and not by means of a special application to the Crown or the Legislature.

A little additional consideration would, however, have shown that, although incorporation would have removed all the evils above enumerated, it would have introduced others resulting from the rules relating to corporations. The rules here alluded to are:

First, the rule which rendered corporations not liable on contracts not under seal: and

Secondly, the rule which rendered the members of a corporation wholly irresponsible for its debts.

This gives us the problem which the Legislature would have had to solve if it had set to work to legislate for companies on rational principles. What was wanted was a corporation capable of contracting by its agents, without the formality of any sealed writing; and a corporation, the members of which could, in case of need, be made to fulfil their engagements by a just contribution amongst themselves.

If this problem had been steadily kept in view we should have had a few simple provisions applicable to all companies of whatever kind instead of what we have had and even have still, viz., a number of different schemes applicable to as many different classes of companies, besides a host of other schemes contained in charters and special Acts of Parliament applicable to individual societies, and not appearing amongst the public general statutes. It is in vain to hope for good legislation on any subject if it is to be dealt with in the way in which Joint Stock Companies have been dealt with, that is to say, with a total disregard of all method and all plan. Where is the necessity for one statute for the regulation of railway companies, another for the regulation of banking companies, and another for the regulation of insurance companies? Where is the necessity or advantage of having some companies incorporated, and some not incorporated but empowered to sue and be sued by public officers? Where is the necessity or advantage of having several modes of executing judgments against shareholders, varying not with the wants of the creditor, but with the nature of the company? Why wind up some companies in one court and some in another, and some in several concurrently?

The want of plan and method which pervades the various statutes relating to companies is not only observable in their several general schemes, but also, and to a still greater degree, in their most important details. If any one is disposed to doubt this let him try and answer the question how is a judgment against a company to be enforced? He will find it impossible to give any answer which will be true of more than one particular kind of company. He will have to distinguish one company from another, and to give as many different answers as there are sorts of companies; and yet it is obvious that there is no necessity for all this. There ought to be some one method applicable to all companies without distinction, and by which their members might be compelled to fulfil their engagements.

But it may be said the laws have been already consolidated, and the want of unity and simplicity complained of has recently been supplied. It is greatly to be wished that this were true; but in fact no attempt has yet been made to do more than consolidate first the laws relating to those companies which, like railway companies, cannot be carried on without interfering with private property; and secondly, the laws relating to registered Joint Stock Companies. But there are numbers of companies to which the laws thus consolidated have no application. There are cost book mining companies; there are banking companies still governed by the 7 Geo. 4, c. 46; there are chartered companies; there are companies governed by the Letters Patent Act, (7 Will. 4, & 1 Vict. c. 73), and there are numerous insurance and other companies governed by special Acts of their own. No attempt has been made to deal with these, and even the Bill brought into Parliament last session for the purpose of consolidating the laws relating to companies only dealt with registered companies. What has been wanted from the first, and what is wanted now, is some enactment which shall apply to all companies without exception; nor, if the enactment were confined within proper limits, would there, I conceive, be any serious difficulty in preparing it. So long, however, as Parliament proceeds as it has done, to legislate first for one kind of company, and then for another, consolidating some laws and leaving others untouched, so long will the law relating to companies retain its unenviable notoriety of being, as it is, so intricate, confused, and perplexing, as to defy all attempts thoroughly to understand it.

Again, in legislating for companies, the very serious error has been committed of descending too much into detail. Every company should be allowed to make its own regulations for the transaction of its own business, and should not be fettered by minute legislative provisions upon matters of detail and of form. The Joint Stock Companies Act of 1844 is full of

mistakes of this kind. Besides requiring all sorts of things to be inserted in a company's deed of settlement, and stating with minuteness what a company, when formed, may do, it goes on to specify in detail the rights of the shareholders and the powers and qualifications of directors, and to make minute provisions for the taking of accounts, the appointment of auditors, the keeping of registers, and other matters of that kind. Legislative enactments of this description cannot be enforced without a supervision which would be utterly intolerable; nor can the non-observance of them be punished without arousing a general feeling of disgust. They are wholly out of place, and their only practical effect is to throw doubts on the validity of *bonâ fide* transactions and to encourage dishonest people to repudiate their own acts on the ground of some want of conformity with statutory regulations. A vast amount of litigation has been created and injustice done by reason of the enactments prescribing the form in which contracts shall be made and shares be accepted; and it would be, probably, not very erroneous to say that the whole of this litigation and injustice might have been prevented if no such enactments had been made.

Moreover, enactments of the nature now alluded to are bad, because they cannot be practically carried out. Let us take as an example the 9th section of the Companies Clauses Consolidation Act, and see how courts of justice have been compelled to deal with it. The section says,—

1. That every company to which the Act relates shall keep a book called the register of shareholders;

2. That in such book shall be fairly and distinctly entered the names and additions of the persons entitled to shares in the company, together with other matters which I pass over.

3. That the surnames of the shareholders shall be entered in such book in alphabetical order.

4. That such book shall be authenticated by the seal of the company.

5. That such authentication shall take place at the first ordinary or next subsequent meeeing of the company, and so from time to time at each ordinary meeting.

This section has, as might be expected, given rise to much litigation, the result of which seems to be that so long as a register of shareholders is kept substantially complying with the Act, it is a matter of perfect indifference whether the particular directions contained in the Act are complied with or not. It does not matter whether the book is called register of proprietors instead of register of shareholders, nor whether the names and additions of the shareholders are accurate, nor whether an alphabetical arrangement of their surnames is rigidly adhered to, nor whether the seal of the company has been affixed at the meeting specified by the Act or at some other meeting. As to all these matters the Act is said to be directory only; but that phrase, as applied to the enactment in question, will be found to mean that it is wholly immaterial whether the minute directions referred to are complied with or not.

I am far from questioning the propriety of the decisions which have led to the above result. They are clearly founded on a common sense view of the intention of the Legislature, but that very circumstance shows that the Legislature did not care whether its commands were obeyed or not. This appears to me to be a great error. If it is immaterial whether certain forms should be adhered to or not, the Legislature should not tie the public down to one form rather than to another; and, above all, the supreme power should not stultify itself by saying that certain things shall be done in a particular manner, and leave it optional with its subjects to do them in that or some other manner as they may find most convenient.

I quite admit that it should be incumbent on companies to keep accounts and registers, and that the shareholders should have some clearly defined rights, whether they have expressly stipulated for them or not; and I am not prepared to deny the expediency of compelling companies to publish periodical statements of their affairs. But what I am desirous of pointing out is, that the Legislature ought to issue no commands which it is impossible to enforce, and the non-observance of which it is inexpedient to punish, and that this principle has not been kept in view in legislating for companies. The more minutely the sovereign power prescribes how things are to be done, the more it trammels its subjects; and when it attempts to lay down rules for carrying on ordinary business, it inevitably does much more harm than good. Such matters are wholly unfit for legislation; and with a very few exceptions I think it may be truly said that every form required by law to be observed in transacting the ordinary affairs of life is neither more nor less than a public nuisance.

The mistake of descending too much into detail has been to some extent avoided in the Joint Stock Companies Act of 1856, and the device there had recourse to of appending to the Act a set of regulations which may be either adopted or not is ingenious and useful. The regulations not being enacted by the Legislature, may be modified by every company as occasion may require, and as they have not the force, so neither have they the rigidity of rules set by the law giving power. This is a considerable step in the right direction; but much yet remains to be done; for the foregoing observations on the evil of descending too much into detail apply nearly as forcibly to companies' deeds of settlement and regulations as to Acts of Parliament.

The remarks I have made upon the errors committed by the Legislature in dealing with companies, apply, it will be observed, to companies as going concerns. But when we turn to what has been done to facilitate the dissolution and winding upof companies unable to carry on their business, we shall find that even still greater mistakes have been made. Most persons who know anything of the practical working of the celebrated Winding-up Acts of 1848 and 1849 will agree in saying that they were productive of almost unmixed evil.

It was hoped that by the Acts in question, a company of many shareholders might be dissolved and wound up as easily as a partnership of few members, allowance being of course made for increased difficulties consequent on increased numbers of persons concerned. How these hopes have been disappointed, how shareholders, instead of being benefited by the Acts, have been ruined by the frightful expense consequent on their application, are matters which are unfortunately only too well-known. To what is all this attributable? Mainly I believe, to the commission of the three following errors, viz.—1. The error of allowing creditors to sue individual shareholders during the pendency of the winding-up proceedings; 2. The error of allowing the same company to be wound-up in bankruptcy, and also, and at the same time, in chancery; and 3. The error of entrusting the winding up of companies to the masters in chancery. These errors have, however, been corrected, and since creditors have been restrained from levying execution against the members of their debtor companies which are being wound up, and since official managers have been brought more under the direct control of the equity judges, the evils before complained of have been greatly diminished. In the practical working of the Winding-up Acts, there is, however, still great room for improvement.

It is not, however, my intention to attempt to lay before the society any scheme for amending the law relating to companies; my object has been simply to draw attention to a few important principles which the statutes relating to companies have violated; and if I have succeeded in tracing the past and present unsatisfactory state of the law to the causes which have produced it, I shall at least have done something to further the objects of the society, and to discharge the duties of the office which I have the honour to hold.

THE LATE WILLIAM DAVID LEWIS, ESQ., Q.C.

There is something so inexpressibly sorrowful in the death of a young man who has sacrificed his life to the acquirement of a brilliant fame, which he never lived to enjoy, that whoever reads these lines cannot fail to lament the fate of the subject of the present notice. Perhaps in every other profession than that of the law, the early struggles of those who seek distinction may be attended with poverty and, no doubt, always imply a self-denial and resolution that are well nigh heroic; but no profession requires the same terrible sacrifice of all that human nature loves best, as the profession of the law; and never was there a more remarkable illustration of this than in the case of him whose early and unexpected death is now the subject of such deep and universal regret throughout the profession. Not yet having completed his 38th year, but having just touched the object of his high and praiseworthy ambition—attained thus early in life by an amount of labour almost incredible—disease and death forbad him to taste but for a moment the fruit of so many years' unceasing toil and self-denial.

Mr. William David Lewis was the eldest son of the Rev. George William Lewis, a clergyman of the established Church, residing at Ramsgate, who, although greatly admired as a preacher and respected as a man, at the time when his eldest son left home to commence the study of the law and for some years afterwards, had gained no greater preferment in the Church than a simple curacy, with its moderate stipend. Under these circumstances it may easily

he conceived what difficulties attended the start in life and introduction into the profession of his son. At a very early age, however, he had set his heart upon becoming a great lawyer. The brilliant career of Lord St. Leonards, then Sir Edward Sugden, Lord Lyndhurst, and Lord Brougham, whose names were as familiar to him as household words, captivated his imagination and from his boyhood gave him a resolution and an enthusiasm in his reading, the result of which very soon became one of the wonders in the profession. At the early age of fourteen, while still engaged under the tuition of his father in the study of the classics, he diligently devoted his leisure to reading and transcribing the 2nd vol. of Blackstone's Commentaries. Before he was 15 he had not only copied nearly the whole of this book, but had made for his own use a summary of its contents. In 1838, while yet under the age of 15, he came to London and was placed under the tuition of Mr. John Rudall, who had even then a high reputation as a conveyancer, and whose chambers were much frequented by students. Mr. Lewis was not immediately entered a member of any Inn of Court, probably as much because of the *res angusta domi* as on account of his extreme youth. So great, however, was his diligence, and so earnest his resolution, that in the course of three months from the time of his entering Mr. Rudall's chambers, he had completed a volume of precedents which he copied out with his own hand; and his custom was, having thus spent the early part of the day in acquiring familiarity with the practical part of conveyancing, to devote his evenings to the perusal of elementary treatises on the principles of law, which he purchased out of the savings of the necessarily limited allowance that he received from home. In after life he was sometimes wont, amongst his friends, to allude to the straits and contrivances to which he was driven to procure his first library, which he always regarded with peculiar affection. So far, indeed, did he carry his self-denial, that he frequently, for a whole week, allowed himself no better dinner than a crust of bread, in order that he might become the possessor of some prized volume. In Hilary Term, 1839, being then in his sixteenth year, he was entered a member of Lincoln's-inn; but he still, and for some years continued his attendance at Mr. Rudall's chambers, which was generally co-extensive with that of the clerk, and, frequently longer—his regular time for leaving being eight o'clock. Mr. Rudall has remarked of him that his pupil never on any occasion asked him a single question upon a point of law, or applied to him for a solution of any difficulty in practice. Mr. Lewis, when a student, invariably applied for his information directly to the text books and authorities; and afterwards, when his own chambers were much resorted to by pupils, he sometimes urged upon them the advantage of adopting this method. There is no doubt that, if intelligently pursued by an apt student, it is calculated to confer decided benefit upon him; for whatever is thus learned is more vividly impressed upon the mind, and principles thus acquired take deeper root in the understanding. We are so constituted that pain or anxiety is frequently the most effective aid to memory, especially when either is succeeded not only by the pleasure that comes from relief, but also by that which arises from having gained something at the expense of ease and indolence. To acquire a masterly knowledge of the practice of conveyancing, and of the principles of real property law, with such help only as one may obtain for himself by handling papers and reading books, was, certainly, a marvellous achievement for a mere boy. Perhaps there never was another instance in which a youth who had not yet attained his nineteenth year commenced the practice of a conveyancer under the Bar; at all events, the profession has no tradition of any learned and accomplished conveyancer in actual practice at the age of 19. Such, however, was the fact in Mr. Lewis's case. Keenly sensible of the sacrifices which his father had made on his behalf, he was anxious at the earliest possible moment to cease to be a burden upon those to whom he was lovingly attached; and while he was yet scarcely 19, he took chambers in Serle-street, and commenced practice as a conveyancer under the Bar. Two years afterwards (in Hilary Term 1844), having then attained the age of 21, he was called to the Bar. A year before he had completed and published his great work on the Law of Perpetuity, which of itself would be sufficient to hand his name down to posterity as one of the most remarkable of English jurists. As the achievement of a youth under 20 years of age it is unparalleled in the history of legal authorship. Lord St. Leonards was only 22 years of age when he completed his famous book on Vendors and Purchasers, which may be said to have reconstructed that entire branch of law. Mr. Jarman was also, no doubt, a very young man, and of only three years standing as a barrister, when he edited Powell on Devises. These are no doubt remarkable instances of very young men mastering most difficult and complicated branches of law; but Mr. Lewis's achievement was still more extraordinary. The subject which he selected for his first effort, and while he was not more than 18 years old, was unquestionably the most abstruse in the entire domain of law. Without anything like an accurate chart or compass, he had, almost unaided, to traverse and reduce into order a region at once vast and obscure — as he himself in his preface expressed it—to cut for himself "a path through a confused and extensive mass of statutes and of cases." The task was hopeless to any except one who could grasp great principles, and by a philosophic elimination construct a system out of apparent chaos. The subject was not to be dealt with after the fashion of law book-makers, by a mere collection and classification of reported cases. It was manifestly one requiring the handling of not only an accomplished but a severe jurist; and such it had in the author who ultimately took it in hand. Mr. Lewis's book on the Law of Perpetuity would have been a very remarkable production for a mature lawyer, after many years' familiarity with legal subjects; as the work of a mere boy it is, and will always remain, a marvel not only for lawyers, but for psychologists.

While, however, the name of Mr. Lewis will be best known to future generations of lawyers as the author of an enduring book, his contemporaries have associated his name not less with the cause of legal education, and the reformation of our inns of court as seminaries of law. Towards the close of 1847, the benchers of the various inns of court resolved to resume their ancient and proper functions of legal instructors; and, to the honour of Gray's-inn, the benchers of that society, in the handsomest manner, offered to Mr. Lewis, who was then only twenty-four years of age, the lectureship on the law of real property and conveyancing. He willingly accepted this office; and with singular zeal entered upon the discharge of its duties. The success which attended his efforts was most signal, and no doubt very much contributed to the permanent establishment of the system of lectureships. The lectures and "moots" at Gray's-inn attracted great numbers of students for the Bar and junior barristers, including some who have since made a considerable figure, not only in the profession but in public life. Amongst others, Mr. Frederick Peel, then a student for the Bar, was one of the most assiduous students attending Mr. Lewis's lectures. Mr. Lewis also established annual honour examinations, and every year while he was lecturer bestowed a prize upon the most successful candidate.

With characteristic forethought and devotion to his subject, he commenced his labours as lecturer by an inaugural address in which he mapped out the entire domain of the laws of real property; and during the five years in which he held the office, he delivered every year sixty original and elaborate lectures without a single instance of repetition, or in any lecture going over ground upon which he had touched before; and he accomplished all this while he had otherwise abundant and increasing employment as counsel, both in chambers and in court. It is no wonder then, that at this time his naturally strong constitution suffered from so great a strain. With boundless faith not only in his intellectual but his physical strength, he taxed both to the utmost. Very frequently during his lectureship at Gray's-inn, he abstained from food from breakfast until he had returned home, between 9 and 10 o'clock at night, after delivering his lecture; and having dined at that hour, it was his habit to resume his own professional work until a late hour, although his invariable habit all the year round was to rise early for the purpose of getting through some of his work before he went to chambers. With any other habits, his increasing business would have made it impossible for him to discharge his professional duties; and in 1852 it compelled him to resign his lectureship, which he did with reluctance and regret, but not before he had raised the fame of Gray's-inn lectures far above that enjoyed by the lectures of any other Inn of Court. To the Benchers of Gray's-inn, and especially to Mr. Samuel Turner and one or two others to whom Mr. Lewis was mainly indebted for his appointment, and who cordially seconded all his efforts to advance the cause of legal education, he alway expressed his deep obligation.

In 1854, the Government appointed a commission to consider the subject of the registration of title with reference to the sale and transfer of land. Among the commissioners were Mr. Walpole, Mr. Napier (late Lord Chancellor of Ireland), Sir Alexander

Cockburn, Sir Richard Bethell, Mr. Lewis, and Mr. Cookson. Without desiring to detract in the least from the labours of any of the other commissioners, we may fairly state that the services bestowed by Mr. Lewis in the preparation of the Blue Book which resulted from that commission, were extremely laborious and valuable. Not less than sixty pages are taken up with his sketches of a Bill to simplify the title to real property, and of another Bill to facilitate its transfer. These able productions were something more than the precursors—indeed, they may be said to have afforded the models—of the measures relating to the same subject which have since been proposed to the Parliament of this country, and have—as our readers are aware—been adopted by the legislature of South Australia. Several of the clauses in the Bill to simplify title have also since been substantially incorporated by Lord St. Leonards in his two recent Law of Property Acts.

Although we have already exceeded our allowable space, we ought not to omit to name Mr. Lewis as the founder, and, for some time, the most efficient supporter of the Juridical Society. It is only five years ago since he first suggested its formation and induced a few members of the Bar to join with him in its promotion. His object, and that of the society, was to encourage scientific investigation and study of law; and, judging by its published transactions, it has already achieved useful, and, in some instances, highly creditable results. Mr. Lewis contributed papers on the "Origin and Use of Legal Fictions," "Life Peerages," "Some Popular Errors Concerning Law," "The Law of Blasphemous Libels," and other subjects. He also gave to the press other occasional papers on legal subjects, among which his article* on the Bridgewater Peerage case, in support of the decision of the House of Lords, —the most elaborate and forcible argument published on that side—is worthy of special mention.

In Trinity Term, 1859, before Mr. Lewis attained the age of 36 years, he received a silk gown from Lord Chelmsford, who was then Lord Chancellor; and although his vigorous constitution had suffered to some extent from the unrest of twenty years, and the exhaustion of so much work, it was hoped that the comparative leisure which generally intervenes upon an introduction to the Inner Bar would have been sufficient to restore him to health; and for some time this expectation appeared to be well grounded. In 1859, for the first time since he entered Mr. Rudall's chambers, he took a long vacation. Immediately upon attaining the rank of Queen's Counsel he attached himself to the Court of Vice-Chancellor Sir J. Stuart, for whom he entertained the highest respect. He was also accustomed to express his special admiration of Lord Justice Knight Bruce. On one well known occasion this distinguished judge did Mr. Lewis the honour of desiring his presence before the Court of Appeal, as *Amicus Curiæ*, upon a case involving an abstruse question on the Law of Perpetuity. One of his last expressions was of grateful thanks to both these learned judges for their kindness to him during the short illness which terminated his career. The disease of which he died was aneurism of the heart, of the first approach of which he had an intimation in July last, when an eminent physician warned him of the risk of continuing to practise as an advocate. He continued, however, to appear in court until the last day of the sittings before Christmas, after which the disease became so much worse as to confine him wholly to his room. But even there, although occasionally suffering great pain, he insisted upon reading the briefs and cases which continued to be sent to his chambers, even after his illness became generally known, and he continued to do so almost up to his last day. Notwithstanding his previous illness his death was sudden and was wholly unexpected in the profession. The deep and general sympathy with which the news was received, speaks for itself both as regards its subject and also as regards the Bar, of very many members of which, at one time or another, Mr. Lewis had been an opponent, and must always have been a formidable competitor.

His career may be regarded as at once an encouragement and a warning to ambitious students of the law. He himself attributed his broken constitution to want of occasional rest; and on his death bed said that his premature break-down was owing to the fact that until he was made a Queen's Counsel he had never allowed himself a long vacation, or indeed a short one. It is characteristic of the man that he never was present at any theatrical or musical performance, and never once went to any place of public amusement, excepting the Crystal Palace, which he visited on two or three occasions. The only diversion from the labours of his profession which he ever allowed himself, was in the region of politics, of the philosophy of which he was an ardent student. He was very conversant with the constitutional history of England, and with such writers on ethics and economy as Lord Bacon, Sir James Mackintosh, and Mr. Stuart Mill. Mr. Lewis contested Pontefract, Sandwich, and Norwich, on Conservative principles, but never succeeded in his attempts to obtain a seat in Parliament. As a real property lawyer, very few of his contemporaries were equal to him. Perhaps none were much if at all superior in a general knowledge of English jurisprudence. While he had no pretensions to the first rank of forensic speakers, he was nevertheless extremely effective, not merely in argument upon points of law, but in statement of facts. There was a pervading enthusiasm in his nature which imparted force to all that he said; although he certainly wanted the quiet graces of oratory:—*quod est oratoris proprium, apte, distincte, ornate, dicere.* He spoke with distinctness and also with energy, but not with much grace—owing no doubt very much to the perpetual pressure of business to which he was always subject. Had his life and health been spared, he would most probably have acquired that quiet and polished manner of address which seems to be *et jus et norma loquendi* in courts of equity.

Mr. Lewis married at an early age, and leaves behind him his widow and one son. Although his father was a clergyman, his family have been long connected with the profession of the law—his grandfather and his uncle having been for many years town clerks of Rochester, and his brother, Mr. C. E. Lewis, being well known as an eloquent and rising advocate in the Court of Bankruptcy. Another brother was called to the Bar, and commenced practice in the common law courts. Those who recollect his learning and ability can even now appreciate the keen regret caused to the subject of our notice, by the decease, at the age of 24 years, of his accomplished brother. He died in 1848 of heart disease of an organic character.

*19 Law Review, p. 1.

MARRIAGE WITH A DECEASED WIFE'S SISTER.

Fenton v. *Livingstone.*—This case is fully reported in 3 Macq. 497; 7 W. R. 671. The facts of the case are as follows:—Thurstanus Livingstone married two sisters one after the other. He was domiciled in England; his two wives were both Englishwomen, and in England Alexander Livingstone, the defender, was born. He claimed, as lawful son of Thurstanus Livingstone, estates in Scotland, to which he asserted his right of succession as heir of entail upon the decease of his uncle Sir Thomas Livingstone, the person last in possession. Anne Fenton, the pursuer, claimed the same estates as heir of entail upon the decease of Sir Thomas Livingstone on the ground that all the preceding substitutes and heirs had failed, and impeached the title of the other claimant on the ground of his father's marriage with his mother having been illegal by the law of Scotland, and the issue excluded from inheritance to a Scotch estate. The case was originally heard before the Lord Ordinary (Lord Ardmillan) in Scotland, on an action of declarator of bastardy raised by Anne Fenton against Alexander Livingstone, the defender, and the Lord Ordinary decided that the defender was born in England, was the offspring of a marriage celebrated in England, between parties domiciled in England at the date and during the subsistence of the marriage; and that he was legitimate according to the law of England; and that his legitimacy ought to be recognised by the Scottish Court. The first division of the Court of Session having confirmed the decision of the Lord Ordinary, the pursuer, Anne Fenton, appealed to the House of Lords, and the appeal was argued before their lordships in the session of 1859, when their lordships held that a person born of an English marriage with the deceased wife's sister was not legitimate in Scotland as to the succession to real estate; and, reversing the decision of the Court of Session, remitted the cause back to that court.

The First Division of the Court of Session of Scotland has recently decided (Lord Deas dissenting), first, that as the defender was the issue of an unlawful marriage by the law of England, his place of domicile, he could not be recognised as a legitimate child in Scotland, and entitled to succeed to a landed estate there. In the second place, the judges were unanimous that by the old statute law of Scotland the marriage of a man with his deceased wife's sister was civilly null, and that the defender was therefore illegitimate, and not entitled to succeed.

SUMMARY of PROCEEDINGS in the CHAMBERS of the MASTER OF THE ROLLS and the VICE-CHANCELLORS for the years ending 1st November, 1859 and 1860.

[Compiled from Returns made to her Majesty's Government for insertion in the "Judicial Statistics" of the above years.]

Nature of Proceedings.	Total of all the Chambers.				Master of the Rolls.				Vice-Chancellor Kindersley.				Vice-Chancellor Stuart.				Vice-Chancellor Wood.			
	Number.		Amount.		Number.		Amount.		Number.		Amount		Number.		Amount.		Number.		Amount.	
	1859.	1860.	1859.	1860.	1859.	1860.	1859.	1860.	1859.	1860.	1859.	1860.	1859.	1860.	1859.	1860.	1859.	1860.	1859.	1860.
			£	£			£	£			£	£			£	£			£	£
Number issued of summonses to originate proceedings, viz.—																				
For the administration of estates....	332	420			148	200			45	73			108	109			31	38		
Under the Charitable Trusts Acts ..	81	59			51	26			5	6			7	13			18	14		
For the appointment of guardians and maintenance of infants	146	143			54	43			21	28			46	46			25	26		
For other purposes	91	142			45	57			3	13			34	25			9	47		
Number issued of summonses not being summonses to originate proceedings ..	16,361	16,184			6,245	5,794			2,442	3,196			4,237	3,838			3,437	3,356		
Number of orders made, viz.—																				
Of the class drawn up by the registrars	6,772	6,386			2,238	2,175			1,353	1,031			1,607	1,714			1,574	1,470		
Of the class drawn up in chambers..	5,770	5,143			2,208	1,586			886	1,280			1,148	868			1,528	1,409		
Number of orders brought into chambers for prosecution, other than orders for winding up companies	1,919	1,933			673	708			320	288			588	631			338	306		
Number of orders brought into chambers for winding up companies	11	9			2	2			3	2			—	1			6	4		
Number of advertisements issued	964	914			314	361			212	122			276	267			162	164		
Number of debts claimed and adjudicated on	4,020	3,106			1,715	1,655			599	194			888	630			818	627		
Amount of debts proved			1,288,387	727,362			441,768	346,914			172,335	59,851			237,852	139,556			436,431	181,041
Number of accounts passed other than receivers' accounts	1,271	1,138			472	426			116	170			365	305			318	237		
Amount of receipts therein			5,870,849	6,705,593			2,105,242	2,226,676			1,294,074	1,246,417			968,285	1,418,330			1,485,246	1,814,170
Amount of disbursements and allowances therein			5,428,985	6,212,661			1,996,672	2,045,159			1,258,923	1,257,788			854,408	1,252,662			1,318,981	1,657,052
Number of receivers' accounts passed....	475	476			153	151			77	97			150	146			95	82		
Amount of receipts therein			1,124,306	1,035,106			431,044	332,801			310,891	255,833			198,112	213,696			184,257	232,776
Amount of disbursements and allowances therein			909,803	856,761			345,320	264,299			248,334	225,226			160,703	171,055			155,445	198,121
Number of sales of estates under orders of court	496	457			172	152			61	54			140	169			117	82		
Amount realized by sales of estates..			1,745,840	1,598,157			533,480	561,904			120,413	158,662			689,066	439,071			402,879	438,520
Number of purchases of estates under orders of court.....	84	74			19	17			19	21			15	16			31	20		
Number of titles and other matters directed to be investigated by the conveyancing counsel	379	330			120	106			74	56			93	102			92	66		
Number of certificates filed	2,411	2,242			677	784			385	415			679	670			470	373		
Number of contributories included in lists of contributories	1,937	1,640			144	162			1,408	1,260			—	22			385	176		
Number of contributories excluded from lists of contributories.....	119	184			30	3			60	139			—	1			29	41		
Amount of calls made under orders for winding up companies			797,092	733,869			195,362	59,561			331,612	142,665			—	46,000			270,177	485,643
Number of appointments (by summonses, adjournment, or otherwise) disposed of	39,278	39,100			13,777	13,429			7,045	7,803			10,632	9,845			8,424	8,030		
Number of orders under which accounts and inquiries were pending at date of return	2,471	2,348			976	1,061			432	398			384	389			679	455		
Number of orders for winding up companies then pending	76	84			27	29			20	19			2	5			27	31		
Amount of fees collected in chambers by stamps			11,401	9,831			4,616	3,345			1,706	1,987			2,703	2,524			2,285	1,775

Note.—The fractions of a pound are omitted.

Law Students' Journal.

QUESTIONS FOR THE EXAMINATION.

Hilary Term, 1861.

I. PRELIMINARY.

1. Where, and with whom, did you serve your clerkship?

2. State the particular branch or branches of the law to which you have principally applied yourself during your clerkship.

3. Mention some of the principal law books which you have read and studied.

4. Have you attended any, and what, law lectures?

II. COMMON AND STATUTE LAW AND PRACTICE OF THE COURTS.

5. Give a brief account of concurrent and peculiar jurisdictions of the Courts of Queen's Bench, Common Pleas, and Exchequer.

6. How are the costs of the cause to be apportioned when the plaintiff has accepted money paid into court in respect of a particular sum or cause of action, but goes on for more, and is defeated as to the residue of his claim?

7. When any number of days, not expressed to be clear days, is prescribed by the rules or practice of the courts, how are they to be reckoned?

8. What is an *issue?* and how are issues in fact, and issues in law, respectively raised and decided?

9. A., B., and C. are sued together on a joint promissory note; they are also sued for breaking and entering a close. Judgment is recovered against A. alone in each action. Has A. a right to contribution from his co-defendants in either action?

10. What is the general Common Law rule as to interest on a debt, in the absence of any express stipulation to pay it?

11. What communication should an attorney have with the opposite party previous to trial, upon his documentary evidence; and what is the consequence of neglecting to take the proper steps?

12. In what instances can entries in the writing of a deceased person be given in evidence to prove the facts stated in them?

13. How is the debt affected in law when the payee of a promissory note dies, leaving the maker of the note his executor?

14. What are writs of *Fi: fa* and *Ca: sa*, and whence are these names derived? Can they be used together, and can the latter be always resorted to?

15. What penalty is incurred upon signing judgment for want of a plea, where the writ of summons has not been specially indorsed, when the defendant is within the jurisdiction, and the claim is for a liquidated demand?

16. Define *general average* and *particular average*.

17. When a factor sells goods for an undisclosed principal, in whose name may an action be brought for the price of the goods? and what is the rule of *set-off* applicable in these cases?

18. What modern alteration has been made in the law relating to the consideration for a guarantee appearing in writing?

19. In what cases has the consignor of goods the right of *stoppage in transitu*, and how is such right liable to be defeated?

III. CONVEYANCING.

20. By the Act of the last session, called the Trustees' and Mortgagees' Act, passed 28 August, 1860, in all cases where by deed, will, or other instrument of settlement, executed after the passing of the Act, a power of sale is given,—there being given by the Act authority to exercise such power of sale, in the way, under the restrictions, and with the powers therein mentioned, —describe in a general way the powers and authorities so given by the Act.

21. By the same Act, what power of sale is given to mortgagees under an instrument executed after the passing of the Act, in what events does it arise, by whom exercisable, and under what restrictions? what are the powers by the Act conferred on mortgagees of appointing a receiver,—and observing that these statutable powers may be negatived by a declaration contained in the instrument creating the estate, would you, as the ordinary rule in practice, adopt them or not?

22. By the Act of the last session to amend the law of property, what is necessary, after entering up a judgment, to be done, in order that the same may affect land as to a purchaser or mortgagee, and does it make any difference whether such purchaser or mortgagee have notice or not of the judgment?

23. Where lands are devised charged with the payment of debts alone, or charged with debts and legacies together, or charged with legacies only, can the devisee in either, and, if in either, which of those cases, make a good title to a purchaser or mortgagee, without his being obliged to look to the discharge of such debts and legacies?

24. What lease is a person entitled in possession to a settled estate for his life under any settlement made after the 1st of November, 1856, empowered to make, as to the duration of the lease, the rent to be reserved, and other conditions?

25. What is the effect of such lease, as to the interests of parties entitled to any charge or incumbrance affecting the estate out of which the lease takes effect?

26. Where a will contains a power to raise money out of an estate, not confined to raising it out of the rents, or a power to charge an estate generally,—would such power authorise a sale of the estate, and also a mortgage of it, both, or either, and which?

27. State in general terms the rule for determining how far a power is suspended or extinguished by any act of the donee of the power having also an interest in the estate, affecting that interest, could such a donee, after creating a charge on his estate, exercise a power in any way defeating such charge?

28. If a tenant for life with power of leasing were to alienate his whole life estate, would the power be extinguished? Would a power in gross, that is, a power given to a person who has an interest, but not to take effect out of that interest, be extinguished by alienation of that interest?

29. Can an equitable mortgage on real property be created by a deposit of deeds, merely, without writing? If so, may or not the object of the deposit be explained by parol evidence?

30. Would such a deposit have preference over a subsequent purchaser or mortgagee of the legal estate, with or without notice of such equitable mortgage? Is a written memorandum of the deposit essential or advantageous?

31. If a tenant in tail, in possession, or a tenant for life, pays off an incumbrance, in either and which case, deemed to be extinguished? and in what way would you proceed, to keep alive the charge, in favour of the tenant, in whose case it would be otherwise extinguished?

32. Having reference to the Act of George the Second, subjecting to certain conditions, the conveyance of lands for charitable purposes,—state in general terms, what description of property are by that Act barred from being settled or charged for a charitable use, except in the way therein mentioned, and what is the mode of conveyance in which such object may be effected?

33. May an advowson be aliened for any estate, and may the next presentation or any number of presentations be granted away and if the grantee of a next presentation does not dispose of it in his lifetime, or by will, in whom at his death will it vest? Can the right of presentation to a church that is void be by any means aliened?

34. If you had to advise on the sale of building land, in fee, in lots, and were required to make the best provisions for the common use of streets, roads, drains, &c., or for the prevention of building, or securing easements, how would you proceed to carry out the object, either by vesting land for common use in trust, or by granting a rent charge in favour of one lot over another, or by mutual covenants between the purchasers framed in the best way the law would admit, so as to run with the land, or by what means?

IV. EQUITY AND PRACTICE OF THE COURTS.

35. Mention some of the ordinary cases in which the Court of Chancery exercises jurisdiction as distinguished from courts of law.

36. What is an ademption of a legacy? Give some instances of ademption.

37. A. by his will gives to charitable uses the residue of his property, consisting of consols, railway shares—a share in the new river company—shares in various insurance and dock companies—long leaseholds for years and leaseholds for lives—a common money bond—and arrears of unreceived rents. Are any, and which, of these gifts void, and why? and who is entitled to the benefit of such portions of the said property as do not pass to the charitable uses?

38. If A. assigns to B. a policy on his own life for a valuable consideration, and subsequently assigns the same policy to C. also for a valuable consideration, and B. and C. both give notice of their respective assignments to the insurance office, but C's notice is served on the office before B's notice,—what will be the relative legal position of B. and C.?

39. What is a distringas, and how may it be obtained?

40. A settlement dated in 1861 authorizes the trustees to invest the trust funds in Government or real securities in

England; may the trustees invest such trust funds in any other, or what, countries, and by virtue of what authority? Is there any difference if the settlement is dated in 1840?

41. Suppose a plaintiff appeals to the Lords Justices from a judgment of one of the Vice-Chancellors, and their lordships differ in the opinion, what is the effect on the judgment of the court below?

42. If the plaintiff's bill is dismissed with costs, and he appeals to the Lords Justices, and the appeal is dismissed with costs, and the costs are not paid,—can he appeal to the House of Lords before he has paid the costs incurred in the courts below?

43. What is the nature and extent of the security required by the House of Lords before their lordships give leave to appeal?

44. A. dies without issue intestate, leaving a mother, widow, two younger brothers, three sisters, and a nephew and niece, children of his eldest brother deceased,—upon whom, and in what proportions, will his real and personal estate devolve?

45. How soon after filing of a bill ought interrogatories to be delivered?

46. Within what time must a plaintiff except to an answer for insufficiency?

47. May the plaintiff except to an answer for any other cause than insufficiency, and for what?

48. State in detail the steps to be taken to get money out of court by petition when the money has been paid in by a railway company as the price of land taken by the company.

49. How may an affidavit be sworn by a person resident in Scotland?

V. BANKRUPTCY AND PRACTICE OF THE COURTS.

50. State generally the benefit intended by the bankrupt law to the debtor and the creditor respectively.

51. What are the conditions necessary to render a debtor amenable to the bankrupt laws, and what to entitle a creditor to obtain an adjudication?

52. Assuming a trader to be insolvent, what various modes are open to him in order to obtain relief through the bankrupt law?

53. Assuming a trader to be insolvent, what various modes are open to his creditors to obtain the application of the bankrupt law?

54. State the difference between the bankrupt law and the insolvent law as to the persons liable to each, respectively, and the relief afforded to the debtor.

55. Enumerate the acts of bankruptcy on which an adjudication may take place.

56. How many meetings are ordinarily held under a petition for adjudication, and state the nature of the proceedings at each?

57. What is the effect of the appointment of assignees on the bankrupt's property?

58. What is the effect of the adjudication on the rights of the creditor?

59. How are the joint and separate assets of partners applied in bankruptcy?

60. Explain the nature of a fraudulent preference made by a bankrupt in favour of a creditor.

61. Explain the nature of the right of stoppage in transitu of goods, and the circumstances which may give rise to it.

62. State generally, from what claims and demands the certificate of conformity discharges a bankrupt.

63. If a creditor holds property of a bankrupt as security for his debt, can he prove on the estate, and if so, on what conditions?

64. A creditor holds bills drawn by a partnership, consisting of A. and B. accepted by a partnership consisting of A., B., and C., can he prove on both estates, or what course must he pursue?

VI.—CRIMINAL LAW, AND PROCEEDINGS BEFORE JUSTICES OF THE PEACE.

65. What is the object of criminal law?

66. How are offences usually classified, having regard to the procedure peculiar to each mode, and what is the distinction between the latter?

67. What in feudal times did the word felony import according to Mr. Justice Blackstone, and whence is it derived?

68. To what description of felonies does forfeiture of lands now attach—also of goods and chattels, and what is the lowest felony, and how is it punishable?

69. How are misdemeanours generally punishable in the absence of express statutory enactment, and what is the chief distinction between them and felonies as to forfeiture?

70. Explain the process by which a person charged with felony is to be proceeded against; how is his arrest and committal to prison to be secured?

71. Who may prefer the indictment, what must it state, in whose name must it issue, and before what tribunal in the first instance brought?

72. Before whom, and by whom, must the witnesses in support of the indictment be sworn, and who cross-examine them?

73. What offences are to be tried before the justices of the peace at sessions, and what are reserved for the higher courts? Mention some of the more important of the last named, and where are the reserved cases enumerated?

74. What is meant by challenging a jury? How many peremptory challenges can a prisoner make, and how many the Crown? State the reason for the distinction.

75. Distinguish murder from manslaughter, and burglary from larceny. Define the two last, and whence are the words derived?

76. When are burglary, piracy, robbery, and arson, capital felonies, and when not?

77. How can an attorney who embezzles property deposited with him for a specified purpose be punished criminally? State the statute and the punishment.

78. What is meant by the extradition of criminals? and how do the provisions of a treaty with a foreign state become the law? Give an instance.

79. Is there any appeal from the decision of the Justices on a summary conviction, if yes, what is it?

HILARY TERM EXAMINATION.

This Examination took place at the Law Society's Hall on the 22nd and 23rd January. W. F. POLLOCK, Esq., one of the Masters of the Court of Exchequer, presided; and the other Examiners were Mr. Ralph Barnes of Exeter, Mr. J. H. Bolton of Lincoln's Inn, Mr. W. Ford of Gray's Inn, and Mr. Freshfield.

The Master addressed the candidates to the following effect:—

Gentlemen, it is customary to address some words of welcome and encouragement to you, from this end of the room, upon the occasion of your presenting yourselves for examination; and although your time in this Hall is very precious, I will, with your permission, encroach upon it for a few moments before you enter on the business of the day.

You are now standing, as it were, at the threshold of that honourable profession to which you have dedicated your future years. You have probably not chosen this career without some consideration of the weighty responsibilities which attach to it. When admitted to practice as solicitors of the High Court of Chancery, and as attorneys in the Superior Courts at Westminster, you will become actual officers of the highest tribunals in the country. In the conduct of suits at law or in equity, you will take a recognized and privileged part in the administration of justice; and you will be no less accountable to the public for your performance of it, than to your clients and to your own consciences. In the wide range of general business, you will be brought into contact with almost every variety of human affairs. Your functions will be as multifarious as they are important. You may be called upon to advise and to act in all the matters belonging to the management of landed property. The most considerable commercial interests may occasionally be entrusted to your superintendence. The welfare and peace of families will frequently be confided to your care and discretion. There is no kind of intercourse between man and man,—there is no difficult complication of circumstances—in which you may not be called upon to render counsel and assistance.

I need not remind you, that for the upright and efficient discharge of duties, often so arduous and so delicate, two things are mainly requisite—I mean *Integrity* and *Knowledge*. A high sense of honour ought to be the life and soul of your vocation. Without it, knowledge can have no healthy existence; and is even in danger of becoming an instrument rather for evil than for good. On the other hand, mere honesty of purpose, unsupported by adequate professional skill, is of little avail; and can sustain only a feeble contention in the battle of the world. Rectitude and ability must be combined—the moral sense and the intellect must both be disciplined—if you desire to make your exertions useful to others and to yourselves.

Of your general fitness to be admitted as members of such a profession, we have already satisfied ourselves, so far as an opinion can be formed upon the experience of past conduct, afforded by your testimonials. It remains for us to test your proficiency in the various branches of legal knowledge in

which you are about to be questioned. In this final ordeal we wish success for all. To some we shall have the gratification of awarding the honorary distinctions placed at our disposal, which now give an interest to this Examination, not always possessed by it, and which as we trust have not been without their influence in animating your studies, and improving their character. Allow me to add that we shall be obliged if you will confine your answers to meeting the questions laid before you. Let the answers be simple and concise; let them be free from prolixity, and from the display of more knowledge than is required for the fair elucidation of the immediate subject of inquiry. In conclusion, let me beg you not to think it unworthy of your attention to bestow some pains upon the mechanical process of making your writing distinct. No one now holds it "a baseness to write fair". It will do yourselves service, and will materially lighten the labours of the Examiners, if you will be so good as to write legibly. Once more, we wish you all a good deliverance.

CANDIDATES WHO PASSED THE EXAMINATION.

Hilary Term, 1861.

Candidates' names.	To whom articled, assigned, &c
Allcard, William Henry	George Frederick Smith.
Allen, William Henry Thomas	Thos. Chauntler; Alfd Rutter.
Allison, Matthew	Joseph John Wright; Henry B. Wright.
Atkinson, John	Edward Bowe Steel.
Barnes, Albert	John William Mecey.
Bartlett, Thomas Henry	John Matthews.
Benson, William	Humphrey Archer Gregg.
Bewley, Edward White	John Hunt Thursfield.
Blyth, Robert	Andrew Meggy.
Brookes, Robert John	Rich. Gilbert Keates Brookes.
Bros, Thomas Kemmis, B.A.	Domville, Lawrence and Graham.
Brown, John Thomas	Edmund Percy.
Bubb, William Henry, B.A.	John Bubb.
Bull, Henry	Henry William Bull.
Cole, James Samuel	Henry Webb.
Cook, Thomas Francis	Edwd. R. Ingram (decd.); Jno. Walcot.
Crook, George William	William Gibson
Dennis, George William, M.A.	David King (decd.); Wm. B. Young.
Dibb, Christopher Jenkins	William Stewart.
Eve, Richard	Algernon S. Field; P. Johnston.
Fearnley, Chas. Abraham	Randall Glynes.
Fox, Alfred	Jno. E. Fox (decd.); John E. Fox.
Franklin, John Veasey	John Eliot Wilson.
Fraser, Douglas St. Clare	Chas. St Clare Bedford; Rt. G. Raper.
Gadsden, George Alfred.	Roger Gadsden.
Gamlen, Robert Heale	Robt. Gamlen.
Gedge, Peter	James Sparke.
Gibson, Thomas	Robert Bartlett.
Haddock, Charles Milner	Thomas Parker.
Hewitt, John Fisher	Geo. Armstrong; Wm. Bell.
Hill, Walter Guy	Jno. Ralph Norton Norton.
Hilliard, James Arthur	Wm. Edward Hilliard.
Hincks, John Steer	Wm. Roscoe (decd.); Fredk. Schultz.
Hoare, Edward	James Wells Taylor.
Jackson, Hugh Fredk. M.A.	John Jackson.
Kent, Arthur	William Boycott.
Knott, James Pullen	William Sandys.
Lay, James	Francis Gibbs Abell.
Letts, Henry	John Letts.
Lowthian, Isaac, B.A.	Daniel McAlpin.
Mathews, James Llewellyn	William Walton.
Oxley, Frederick	Allan Kaye; E. S. Mounsey.
Pearse, James, B.A.	Theed William Pearse.
Phillips, Arthur Bentley	Chas. Hy. Phillips; Jno. Shepherd.
Pitman, Frederick	William Pitman.
Potts, Edward Bagnall	George Potts.
Pulbrook, Anthony, jun.	Christopher Robson.
Pullan, Benjamin Collett	John Shackleton.
Raby, Wm. Parker Poole	Jas. Russell; Chas. Lever.
Randall, John Williams	E. W. Faithfull; G. Nelson; J. Randall.
Rastrick, George, B.A.	C. E. Jemmett (decd.); H. P. Sharp.
Reid, Augustus Henry	Herbert Lloyd.
Rowe, Octavius	Hy. Jno. Whitehead.
Scale, Martin	William John.
Sheffield, Thos. Needham	Isaac Sheffield.
Shepherd, Jas. Parkinson	Frederick Weymss.
Smith, Edwd Thurlow Leeds	William Smith.
Sparkes, Weston Joseph	William Cornish Cleave.
Spencer, Thos. Wilson	Geo. Spencer; Thos. Z. Goldring.
Stanley, Frederick	Samuel Abrahams.
Storer, Edwin	W. Keating Taylor.
Tate, Thomas	F. Pearson (deceased); F. F. Pearson.
Thompson, Benj. Blaydes	Benj. B. Thompson.
Thompson, John	W. Hutchinson.
Trythall, William	Henry Lloyd Jones.
Tucker, John	W. Lockey Harle.
Turner, Thomas	W. Henry Gaunt,
Urry, Thomas Hamilton	J. Goulbourn Etches.
Venning, W. C., jun., B.A.	W. Chas. Venning.
Washington, Joseph W. C.	Wilson & Moorhouse.
Watson, James	J. D. Francis; J. Drummond.
Webster, Thos., M.A.	M. Tatham; A. T. Upton.
White, Thos. Matthew	T. G. Dale: Chas. Bean.
Whittington, Thomas	Benj. Whittington.
Wingate, Bernard	W. Grant Allison.
Woollacott, Thos. Griffiths	T. Edgcombe Parson.
Wright, Edwd. Greetham	Gray & Mounsey; N. Charles Wright.

EXAMINATIONS AT THE INCORPORATED LAW SOCIETY.

Hilary Term, 1861.

At the examination of candidates for admission on the roll of attorneys and solicitors of the superior courts, the examiners recommended the following gentlemen, under the age of 26, as being entitled to honorary distinction:—

Thomas Henry Bartlett, aged 21, who served his clerkship to Messrs. Matthews, Son, & Stoton, of Arthur-street West, London-bridge.

Alfred Fox, aged 23, who served his clerkship to Messrs. J. E. Fox & Son, of Finsbury-circus, London.

Thomas Wilson Spencer, aged 21, who served his clerkship to Mr. George Spencer, of Keighley; and Messrs. Mackeson & Goldring, of Lincoln's-inn-fields, London.

The Council of the Incorporated Law Society have accordingly awarded the following prizes of books:—

To Mr. Bartlett, the prize of the Honourable Society of Clifford's-inn.

To Mr. Fox, one of the prizes of the Incorporated Law Society.

To Mr. Spencer, one of the prizes of the Incorporated Law Society.

The examiners have also certified that the following candidates, whose names are placed in alphabetical order, passed examinations which entitle them to commendation:—

Robert Blyth, aged 22, who served his clerkship to Mr. Andrew Meggy, of Chelmsford, and Mr. John White, of Bargeyard Chambers, London.

Peter Gedge, aged 22, who served his clerkship to Messrs. Jackson & Sparke, of Bury St. Edmunds, and Mr. Thomas Henry Dixon, of New Boswell-court, London.

Augustus Henry Reid, aged 23, who served his clerkship to Messrs. Lloyd & Rule, of Milk-street, London.

Thomas Needham Sheffield, aged 23, who served his clerkship to Messrs. Sheffield, of Old Broad-street, London.

The Council have accordingly awarded them certificates of merit.

The examiners have further announced to the following candidates that their answers to the questions at the examination were highly satisfactory, and would have entitled them to prizes or certificates of merit, if they had been under the age of 26:—

Edward White Bewley, aged 29, who served his clerkship to Mr. John Hunt Thursfield, of Wednesbury.

James Pullen Knott, aged 39, who served his clerkship to Messrs. Sandys and Hill, of Gray's Inn, London.

James Pearse, B.A. aged 34, who served his clerkship to Mr. Theed William Pearse, of Bedford.

Martin Scale, aged 27, who served his clerkship to Mr. William John, of Haverfordwest; and Mr. Richard Boswell Beddome, of Nicholas-lane, London.

Weston Joseph Sparkes, aged 33, who served his clerkship to Mr. William Cornish Cleave, of Crediton,

Frederick Stanley, aged 32, who served his clerkship to Mr. Samuel Abrahams, of Lincoln's-inn-fields, London.

William Trythall, aged 41, who served his clerkship to Mr. Henry Lloyd Jones, of Bangor.

Thomas Hamilton Urry, aged 44, who served his clerkship to Mr. James Goulbourn Etches, of Whitchurch, Shropshire.

Thomas Whittington, aged 30, who served his clerkship to Mr. Benjamin Whittington, of Dean-street, Finsbury-square.

The number of candidates examined in this term was 105, of these 77 were passed, and 28 postponed.

LAW LECTURES AT THE INCORPORATED LAW SOCIETY.

Mr. FREDERICK MEADOWS WHITE, on Common Law and Mercantile Law, Monday, February 4.

Mr. FREDERICK JOHN TURNER, on Conveyancing, Friday February 8.

Births, Marriages, and Deaths.

BIRTHS.

BARNARD—On Jan. 25, the wife of William Tyndall Barnard, Esq., Barrister-at-Law, of a daughter.

BERE—On Jan. 26, the wife of Montague Bere, Esq., Barrister-at-Law, of a son.

MARRIAGES.

HAYLLAR—BLACK. WALTER—HAYLLAR—On Jan. 25, Thomas Child Hayllar, Esq., of the Inner Temple, to Frances Annette, daughter of Charles C. Black, Esq., of Harrow-on-the-Hill; also, at the same time, James Walter, Esq., of 2, Clifford's-inn, and Long Ditton, Surrey, Solicitor, to Mary, daughter of the late Thomas Hayllar, Esq., of Chichester.

HAWKINS—HETHERINGTON—On Jan. 21, Frederick J. Hawkins, Esq., Solicitor, to Jane Tolson, eldest daughter of William Etherington, Esq.

M'NAMARA—MULDOON—On Jan. 26, at Kingstown, Michael M'Namara, Esq., Solicitor, to Elizabeth, daughter of the late John Muldoon, Esq., of Oldcastle, county of Meath, Dublin.

DEATHS.

BOMPAS—On Jan. 24, aged 67, Mary Steele, widow of Charles Carpenter Bompas, Esq., Serjeant-at-Law.

CLARKE—On Jan. 24, in the 78th year of her age, Jane, widow of the late James Clarke, Esq., Recorder of Liverpool, and Attorney-General of the Isle of Man.

DALY—On Jan. 22, aged 36, Thomas Daly, Esq., Solicitor, Liverpool.

EGERTON—On Jan. 24, Henry Egerton, Esq., of Lincoln's-inn, Barrister-at-Law.

ELLOART—On Jan. 27, Frank, son of C. J. G. Elloart, Esq., of Great James-street, Bedford-row, Solicitor, aged 2 years and 2 months.

MAC OUBREY—On Jan. 28, Clara, wife of John Mac Oubrey, Esq., Barrister-at-Law, of the Northern Circuit, aged 36.

London Gazettes.

Professional Partnership Dissolved.

FRIDAY, Feb. 1, 1861.

STAUNTON, THOMAS, THOMAS FREDERIC INMAN, & HENRY BATCHELLOR INMAN, Attornies & Solicitors, 1, Vineyards, Bath (Staunton, Inman, & Inman); by mutual consent. Jan. 28.

Windings-up of Joint Stock Companies.

TUESDAY, Jan. 29, 1861.

BRITISH PROVIDENT LIFE AND FIRE ASSURANCE SOCIETY.—A petition to wind up, presented 25th January, will be heard before Vice-Chancellor Kindersley, on 8th February. H. E. Voules, Solicitor, 16, Gresham-street, London.

Creditors under 22 & 23 Vict. cap. 35.

Last Day of Claim.

FRIDAY, Feb. 1, 1861.

ADDEY, JAMES, Shoe Maker, Doncaster. Smith & Atkinson, Solicitors, Doncaster. April 1.

COLLINGWOOD, JOHN, Esq., Grosmont Villa, Brighton. Wells, Solicitor, Founders'-hall, St. Swithin's-lane, London. Mar. 12.

DAWE, JAMES, Gent., Devonport. Sole & Gill, Solicitors, 67, Duke-street, Devonport. Mar. 4.

DUFFY, PATRICK, Wine & Spirit Merchant, North Shields. J. Borini or E. Flinn, jun., Gents, Executors, North Shields. Mar. 18.

HARLEY, JAMES (formerly known as James Harlan), Dentist, 23a, Davies'-street, Berkeley-square, Middlesex, and also of Finchley, Middlesex. Crafter, Solicitor, 10, Doughty-street, London, W.C. Mar. 1.

OLDMAN, THOMAS, Attorney-at-Law & Solicitor, Gainsborough, Lincoln. Heaton & Oldman, Solicitors, Gainsborough. Mar. 25.

WEBB, JOHN, Yeoman, Fetcham, Surrey. 10, Billiter-square (Solicitor not named). April 1.

WILSON, RALPH, Woollen Draper, Newcastle-upon-Tyne. Chater & Chater, Solicitors, Newcastle-upon-Tyne. July 17.

Creditors under Estates in Chancery.

Last Day of Proof.

TUESDAY, Jan. 29, 1861.

CROSS, ANNE, Spinster, Chester. Harrison v. Wright, V. C. Stuart. Feb. 28.

DUNN, JOHN, Jun., Merchant, Threadneedle-street, London. Salmon v. Dunn, V. C. Kindersley. March 8.

FORDYCE, Rev. ARTHUR THOMAS DINGWALL, Clerk, St. John's College, Oxford, and of Baldock, Hertfordshire. M. R. March 1.

GOLDSMITH, EDWARD, Esq., Blenheim-lodge, Northfleet, Kent. Holton v. Goldsmith, M.R. Feb. 18.

HORTON, FREDERICK WILMOT, a Commander in Her Majesty's Royal Navy, John-street, Mayfair, Middlesex. V. C. Wood. Feb. 26.

LASHLEY, WILLIAM, Esq., Scarborough. Hall v. Simpson, V. C. Wood. Feb. 23.

POYSER, WILLIAM, Farmer, The Knowbury, Cainham, Salop. Poyser v. Salwey, V. C. Kindersley. March 7.

PUGH, WILLIAM, Gent., Hay, Brecon. Pugh v. Pugh, V. C. Stuart. March 12.

FRIDAY, Feb. 1, 1861.

BLACKOW, FRANCIS, Farmer, Greenhow-hill, Yorkshire. Blackow v. Smithson, M. R. Feb. 28.

CADBURY, THOMAS, 24, New Bond-street, Middlesex. Cadbury v. Cadbury, V.C. Stuart. Feb. 27.

DODDS, JAMES, Draper, Berwick-upon-Tweed. Henderson v. Dodds, V.C. Kindersley. Feb. 26.

KILLIK, STEPHEN, Gent., Grove-villas, the Grove, Hammersmith, the Royal Oak, Spencer-street, Clerkenwell, and of Eagle-terrace, Starch-green, Shepherd's Bush, Middlesex. Killik v. Killik, V.C. Kindersley. Feb. 26.

ROOT, SAMUEL, Farmer, St. Lawrence, Essex. Green v. Root, M. R. Feb. 25.

SHARP, JOHN, Farmer, Great Dalby, Leicestershire. Sharp v. Fisher, M. R. Feb. 25.

(County Palatine of Lancaster.)

FRIDAY, Feb. 1, 1861.

BENTLEY, ROBERT, Beer-house & Provision-shop Keeper, Turf Tavern, 100, Whit-lane, Charlestown, Pendleton, Lancashire. Bentley v. Bentley, Registrar of the Court of Chancery, 4, Norfolk-street, Manchester. March 2.

Assignments for Benefit of Creditors.

TUESDAY, Jan. 29, 1861.

BURTON, WILLIAM, Horse Dealer and Farmer, Murton, Yorkshire. Jan. 21. *Sols.* J. J. P., & H. Wood, Pavement, York.

FERRENT, JOHN, Ironmonger, 60, High-street, Merthyr Tydfil, Glamorganshire Jan. 25. *Sol.* Smith, Victoria-street, Merthyr Tydfil.

FUNNELL, JOHN BARNES, Grocer and Cheesemonger, Hastings. Jan. 21. *Sol.* Heathfield, 19, Lincoln's-inn-fields. Middlesex.

GRAHAM, JOHN FISHER, Wine and Spirit Merchant, Chester. Jan. 8. *Sol.* Ford, 2, Grosvenor-street, Chester.

HOLDSWORTH, ARTHUR JONES, Dealer in India Rubber and Gutta Percha Wares and Fancy Merchandise, 115, Dale-street, Liverpool. Jan. 10. *Sol.* Hore, Liverpool.

FRIDAY, Feb. 1, 1861.

ARGENT, JOHN, Licensed Victualler, Rainbow Tavern, Fleet-street, London. Jan. 22. *Sols.* Pawle, Belfrage, & Asprey, 7, New-inn, Strand.

BLAND, WILLIAM, Grocer & Glass & China Dealer, Wellingborough, Northamptonshire. Jan. 25. *Sols.* Murphy & Sharman, Wellingborough.

DANIEL, ARTAXERXES, Innkeeper, Hop Planter, & Soda Water Manufacturer, Farnham, Surrey. Jan. 7. *Sols.* Hollest & Mason, Farnham.

FARAM, SAMUEL, Builder, Lawton, Cheshire. Jan. 17. *Sol.* Latham, Sandbach.

GRAHAM, JOHN, Grocer & Draper, Sealing, Hinderwell, Yorkshire. Jan. 18. *Sol.* Dotchon, Whitby.

HOLYOAKE, BENJAMIN, Grocer & General Dealer, Kidwelly, Carmarthenshire. Jan 7. *Sol.* Jones, Llanelly, Carmarthenshire.

KIRBY, DANIEL, Tailor, 17, Hanover-street, Hanover-square, and 8, Verulam-terrace, the Grove, Hammersmith, Middlesex. *Sol.* Dalton, 3, Bucklersbury, London.

ROBERTS, DAVID, General Shopkeeper, Abercrave, Ystradgunlais, Brecon-shire. *Sol.* Essery, Swansea. Jan. 29.

SMITH, FRANCIS, Innkeeper & Brewer, Bradwell, near Braintree, Essex. *Sols.* Stevens & Beaumont, Great Coggeshall, Essex. Jan. 26.

SPELMAN, WALES, Farmer, Ashfield-with-Thorpe, Suffolk. *Sol.* Rodwell, Ipswich. Jan. 25.

THACKRAY, WILLIAM, Stationer, Manchester. *Sols.* Sale, Worthington, Shipman & Seddon, Manchester. Jan. 12.

WHITE, RICHARD, & WILLIAM BENNETTS, Cabinet Makers & Upholsterers, Penzance, Cornwall (White & Bennetts). *Sol.* Cornish, Penzance. Jan. 28.

Bankrupts.

TUESDAY, Jan. 29, 1861.

ABBOTT, GEORGE, Machinist, Constitution-hill, Birmingham. *Com.* Sanders: Feb. 15, and March 8, at 11; Birmingham. *Off. Ass.* Whitmore. *Sol.* East, Birmingham. *Pet.* Jan. 26.

COOK, JAMES, Tanner, Currier, and Leather Dealer, Walsall, Staffordshire. *Com.* Sanders: Feb. 15 and March 8, at 11; Birmingham. *Off. Ass.* Kinnear. *Sols.* Tyrer, Liverpool; or Smith, Birmingham. *Pet.* Jan. 24.

FABIAN, WILLIAM, Coal Merchant, Wall's End Wharf, Rosemary Branch Bridge, Hoxton, Middlesex. *Com.* Fonblanque: Feb. 8, at 12.30; and March 12, at 12; Basinghall-street. *Off. Ass.* Graham. *Sol.* Hodgkinson, 17, Little Tower-street, London. *Pet.* Jan. 24.

FARRALL, RICHARD, Grocer and Draper, Kidsgrove, Staffordshire. *Com.* Sanders: Feb. 15, and March 8, at 11; Birmingham. *Off. Ass.* Whitmore. *Sols.* Smith, Birmingham; or Challinor, Hanley. *Pet.* Jan. 28.

FENN, PATRICK, Umbrella and Parasol Manufacturer, 13 and 14, Milk-street, London. *Com.* Fane: Feb. 14, at 11; and March 15, at 1; Basinghall-street. *Off. Ass.* Whitmore. *Sols.* Lloyd, 1, Wood-street, Cheapside; or Langford and Marsden, 59, Friday-street, Cheapside. *Pet.* Jan 28.

FOULKES, WILLIAM CHARLES, Draper and Tailor, Birmingham. *Com.* Sanders. Feb. 13 and March 4, at 11; Birmingham. *Off. Ass.* Whitmore. *Sols.* Southall and Nelson, Birmingham. *Pet.* Jan. 26.

GRIMES, ROBERT GREEN, Licensed Victualler, Queen's Arms Public House, High-street, Poplar, Middlesex, and Goat Public House, Golden-lane, Old-street, Middlesex. *Com.* Fonblanque: Feb. 8, and March 12, at 11; Basinghall-street. *Off. Ass.* Graham. *Sol.* Flavell, 21, Bedford-row, London. *Pet.* Jan. 25.

GROOM, JOSEPH, Leather Dealer and Tanner, Wisbeach St. Peters, Cambridgeshire. *Com.* Holroyd: Feb. 8, and March 12, at 12; Basinghall-street. *Off. Ass.* Edwards. *Sols.* Hensman and Nicholson, 25, College-hill, London; or Ollard, Upwell, Cambridgeshire. *Pet.* Jan. 28.

HODGES, JOHN DYER, Builder and Contractor, Landport, Hants. *Com.* Evans: Feb. 7, and March 8, at 11; Basinghall-street. *Off. Ass.* Johnson. *Sols.* Flux and Argles, Cheapside. *Pet.* Jan. 16.

JACOBS, EMANUEL, Stationer and General Dealer, 65, Long-lane, West Smithfield, London (Emanuel Jacobs & Co.). *Com.* Goulburn: Feb. 11, at 2.30; and March 11, at 11; Basinghall-street. *Off. Ass.* Pennell. *Sol.* Frost, 138, Leadenhall-street, London. *Pet.* Jan. 25.

KITT, EDWIN, Publican, Bent Arms, Lindfield, Sussex. *Com.* Fane: Feb. 8, at 11; and March 8, at 12; Basinghall-street. *Off. Ass.* Cannan. *Sols.* Linklaters and Hackwood, 7, Walbrook; or Attree, Clarke, and Howlett, Brighton. *Pet.* Jan. 21.

LUNHAM, THOMAS, Butter and Provision Merchant, Wellington-chambers, Southwark, and 231, High-street, Southwark (T. & R. Lunham). *Com.* Evans: Feb. 8, at 11.30; and March 8, at 12; Basinghall-street. *Off. Ass.* Bell. *Sols.* Laurance, Plews, and Boyer. *Pet.* Jan. 9.

MARRIAGE, THOMAS, and WALTER MARRIAGE, Millers, Barnes Mill, Springfield, near Chelmsford, Essex. *Com.* Evans: Feb. 7, and March 8, at 1; Basinghall-street. *Off. Ass.* Johnson. *Sols.* Treherne and White, 13, Barge-yard-chambers, London: and Meggy, of Chelmsford. *Pet.* Jan. 23.

MISTER, JOHN BECK, Dyer and Calenderer, 9, Norman's-buildings, St. Luke's, Middlesex, and also late of Maiden-lane, Queen-street, London, Packer. *Com.* Fane: Feb. 8, at 1.30; and March 8, at 1; Basinghall-street. *Off. Ass.* Whitmore. *Sols.* Siee and Robinson, Parish-street, St. John's, Southwark. *Pet.* Jan. 25.

RICHARDSON, JOSEPH, Upholsterer, 9, Victoria-road, Pimlico, Middlesex. *Com.* Holroyd: Feb. 8, at 2.30, and March 12, at 2; Basinghall-street. *Off. Ass.* Lee. *Sols.* Ashurst, Son, & Morris, 6, Old Jewry, London. *Pet.* Jan. 25.

VINCOE, JOHN, Builder, 9A, Westbourne-park, Bayswater, Middlesex. *Com.* Fane: Feb. 8, and March 8, at 11; Basinghall-street. *Off. Ass.* Cannan. *Sols.* Lawrance, Plews, & Boyer, 14, Old Jewry-chambers, Old Jewry. *Pet.* Jan. 28.

WATTS, THOMAS, Sail & Ships' Colour Maker, Bristol. *Com.* Hill; Feb. 11, and March 11, at 11; Bristol. *Off. Ass.* Acraman. *Sols.* H. Brittan & Son, Bristol. *Pet.* Jan. 26.

WILSON, ROBERT, Commission Agent & General Merchant, 25, Poultry, London. *Com.* Goulburn: Feb. 11 and March 11, at 1.30; Basinghall-st. *Off. Ass.* Pennell. *Sols.* Blake & Snow, 22, College-hill, London. *Pet.* Jan. 18.

YOUNG, SAMUEL, Licensed Victualler, Racket Court Inn, Birmingham. *Com.* Sanders: Feb. 15 and March 8, at 11; Birmingham. *Off. Ass.* Whitmore. *Sol.* Marshall, Birmingham. *Pet.* Jan. 25.

BANKRUPTCIES ANNULLED.

TUESDAY, Jan. 29, 1861.

FELL, JAMES, Currier, 50, New Compton-street, Soho, Middlesex. Oct. 15.

SAGE, FREDERICK, & PETER PANTER, Builders & Shop Fitters, 11, Hatton-garden, and 33A, Liquorpond-street, Middlesex. Nov. 16.

FRIDAY, Feb. 1, 1861.

BARKER, ALEXANDER, Iron and Tin Plate Worker and Japanner, Bilston, Staffordshire. *Com.* Sanders: Feb. 13, and March 11, at 11; Birmingham. *Off. Ass.* Whitmore. *Sols.* Underhill, Wolverhampton. or E. & H. Wright, Birmingham. *Pet.* Jan. 30.

BROOKSBANK, JOHN, Brush Board Cutter, 33, King-street, Clerkenwell, Middlesex. *Com.* Evans: Feb. 14, at 11.30; and March 19, at 11; Basinghall-street, *Off. Ass.* Bell. *Pet.* Feb. 1.

BULFORD, JOHN, Grocer, Hamworthy, Poole. *Com.* Holroyd: Feb. 16, at 1; and March 23, at 12; Basinghall-street. *Off. Ass.* Edwards. *Sols.* J. E. Fox & Son, Finsbury-circus, London, or Welch, Poole. *Pet.* Jan. 10.

COOK, EDWIN FREDERICK, & RICHARD FREDERICK WOODWARD, Iron and Steel Stampers, Bridge-street West, Hockley, Birmingham (Cook and Woodward). *Com.* Sanders: Feb. 14, and March 14, at 11; Birmingham. *Off. Ass.* Kinnear. *Sols.* Hodgson & Allen, Birmingham. *Pet.* Jan. 29.

DAVIDSON, JOHN RANKEN, Builder and Railway Contractor, Eden Cottage, near Carlisle, and WILLIAM OUGHTERSON, Builder and Railway Contractor, Bush-on-Lyne, near Longtown. *Com.* Ellison: Feb. 8, and March 12, at 12; Newcastle-upon-Tyne. *Off. Ass.* Baker. *Sols.* McAlpin, Carlisle; Reed, London; or Hoyle, Newcastle-upon-Tyne. *Pet.* Jan. 18.

DODD, STEPHEN, & JOHN CHARLES PEELING, Booksellers, Stationers, Printers, and Music Sellers, Woburn, Bedfordshire. *Com.* Holroyd: Feb. 8, and March 12, at 1; Basinghall-street. *Off. Ass.* Lee. *Sols.* Blake & Snow, College-hill, London, or F. W. Massey, Chester. *Pet.* Jan. 11.

ISAACS, ISAAC, Jeweller and Silversmith, Bristol. *Com.* Hill: Feb. 11, and March 11, at 11; Bristol. *Off. Ass.* Miller. *Sols.* Bevan, Giriing, & Press, Bristol. *Pet.* Jan. 29.

IVESON, ATHELSTAN, Timber Merchant and Government Contractor, Three King Court, Lombard-street, London. *Com.* Goulburn: Feb. 13, at 1; and March 18, at 12; Basinghall-street. *Off. Ass.* Pennell. *Sols.* Greville & Tucker, 28, Saint Swithin's-lane, London. *Pet.* Jan. 24.

JAUNCEY, ALFRED, Plumber & Glazier, Forest-hill, Kent. *Com.* Holroyd: Feb. 16, at 1: and March 19, at 12: Basinghall-street. *Off Ass.* Lee. *Sols.* Lawrence, Smith, & Fawdon, 12, Bread-street, Cheapside, London. *Pet.* Jan. 29.

KELLAND, GEORGE, jun., Grocer & Tea Dealer, Lancaster. *Com.* Jemmett: Feb. 13, and March 6, at 12; Manchester. *Off. Ass.* Pott. *Sols.* Evans, Son, & Sandys, Liverpool; or Sale, Worthington, Shipman, & Seddon, Manchester. *Pet.* Jan. 23.

SCOTT, JOHN, Draper, Stonehouse, Plymouth, Devonshire. *Com.* Andrews: Feb. 11, and March 25, at 12.30; Plymouth. *Off. Ass.* Hirtzel. *Sols.* Wood, Bristol; or Bishop & Pitts, Exeter. *Pet.* Jan. 25.

STANTON, JOHN, China Dealer, Liverpool. *Com.* Perry: Feb. 15, and March 4, at 11; Liverpool. *Off. Ass.* Bird. *Sol.* Tyrer, North Johnstreet, Liverpool. *Pet.* Jan. 29.

WAGSTAFF, WILLIAM RACSTER, Wharfinger, Granary Keeper, & Steam Tug Owner, 155, Fenchurch-street, London (Wagstaff & Co.) *Com.* Holroyd: Feb. 16, at 12; and Mar. 15, at 11: Basinghall-strret. *Off. Ass.* Lee. *Sol.* Sherwood, 10, Walbrook, London. *Pet.* Dec. 21.

WARD, GEORGE WILSON, Publican, Worcester. *Com.* Sanders: Feb. 13, and March 11, at 11; Birmingham. *Off. Ass.* Kinnear. *Sols.* E. & H. Wright, Birmingham, or T. P. Watkins, Worcester. *Pet.* Jan. 24.

WILSON, WILLIAM, Paint Manufacturer, Moor-street, Birmingham, and of Sparkbrook, Aston-juxta-Birmingham. *Com.* Sanders: Feb. 13, and March 11, at 11: Birmingham. *Off. Ass.* Whitmore. *Sols.* Blake & Snow College-hill, London, or Hodgson & Allen, Birmingham. *Pet.* Jan. 29.

MEETINGS FOR PROOF OF DEBTS.

FRIDAY, Feb. 1, 1861.

CROFTS, WILLIAM FRANCIS, Printer, 49A & 63, Castle-street, Oxford-street, Middlesex. Feb. 25, at 12.30; Basinghall-street.—CROSS, JAMES LANGLAW, Insurance Broker, Liverpool. March 19, at 11; Liverpool.—DEANE, GEORGE, & FREDERICK YOULE, Merchants, Liverpool (Deane, Youle, & Co.) Feb. 22, at 11; Liverpool.—EYRE, JOSHUA, Silk Manufacturer, Chowbent, Leigh, Lancashire. Feb. 22, at 12, Manchester.—FOOT, HENRY, Silk Manufacturer, Fort-street, Spitalfields, Middlesex, and Sudbury, Suffolk. Feb. 23, at 12.30; Basinghall-street.—LEE, ROBERT, Currier &c., Cromford, Derbyshire. Feb. 28, at 11; Nottingham.—LYONS, JOHN, Steel Manufacturer, Sheffield. Feb. 23, at 10; Sheffield.—MACKAY, JOHN, Timber Merchant, Liverpool. Feb. 22, at 11; Liverpool.—SEAGOOD, OLIVER ALFRED, & HENRY WILLIS SMITH, Builders & Contractors, Wellington-road, Holloway, Middlesex. Feb. 26, at 11; Basinghall-street.—SIMS, WILLIAM HENRY, Apothecary, Winster, Derbyshire. Feb. 23, at 10; Sheffield.—SLATER, HENRY, Common Brewer, Holbeach, Lincolnshire. Feb. 28, at 11; Nottingham.—STARK, CHARLES, & WILLIAM STARK, Corn and Cheese Factors, Mark, Somersetshire. March 7, at 11; Bristol.—STEAD, CHARLES, Flock & Cotton Waste Dealer, Huddersfield. February 22, at 11; Leeds.—TRIPP, JOHN, Tallow Chandler, Cross-street, Walworth, Surrey. Feb. 23, at 12; Basinghall-street.—TUBB, JOHN, Draper, Basingstoke. Feb. 23, at 12; Basinghall-street.—WATSON, HENRY, Miller & Baker, Longford, Derbyshire. Feb. 28, at 11; Nottingham.—WILLIAMS, JAMES, Shipping & Commission Agent, Beer-lane, London. Feb. 25, at 2; Basinghall-street.

We cannot notice any communication unless accompanied by the name and address of the writer

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THE SOLICITORS' JOURNAL.

LONDON, FEBRUARY 9, 1861.

CURRENT TOPICS.

From the intimations contained in the Queen's Speech, and still more if one is to credit common rumour, it would appear that Sir Richard Bethell will be the principal figure in the House of Commons during the present session. Parliamentary Reform being indefinitely postponed, the amendment of the law is considered to be a subject of sufficient importance to engross the attention of Parliament almost exclusively for months to come. A new Copyright Bill, and a new Bill to Amend the Law of Bankruptcy and Insolvency, will open the campaign. A Bill to Facilitate the Transfer of Land is also in the Ministerial programme, as it was last session; but whether there is any serious intention of proceeding with this measure, we have yet no means of judging. We see that already our old friends, the Criminal Law Consolidation Bills, which have done such good suit and service to so many governments, law officers, statute law commissioners, and Parliamentary draftsmen, are again on the tapis. It is to be hoped that now, at length, they are fairly presentable, and that after so many years of probation, Parliament may venture to give them its sanction. We shall not fail throughout the session to keep our readers informed of the various measures before either House, particularly affecting the interests of lawyers; and we hope to have the advantage of their suggestions and assistance, in forming our opinions on such Bills as they from time to time are introduced to Parliament.

In pursuance of the power given to the Lord Chancellor by the Law of Property Act of last session, his lordship has just issued a General Order, by which cash under the control of the Court may be invested in Bank Stock, East India Stock, Exchequer Bills, and £2 10s. per Cent. Annuities, and upon mortgage of freehold and copyhold estates respectively in England and Wales; as well as in Consolidated £3 per Cent. Annuities, Reduced £3 per Cent. Annuities, and New £3 per Cent. Annuities.

It must be gratifying to all those who feel any interest in the well-being of the legal profession to observe in the recent list of articled clerks who have passed their examination an increasing number of University graduates. The question has been very much discussed, no doubt, whether the training obtained at a University is a sufficient compensation to a young man intending to practise as a solicitor, for the compulsory postponement of professional education which is involved in the attainment of a University degree. This consideration, however, has been almost removed by the Attorneys' and Solicitors' Act of last session; but even if it were not, we should consider, in the case of a youth postponing his articles until he had graduated at a University, that he had thereby contributed as much to his own advantage and future prospects as he had to the general credit and dignity of the profession.

At a meeting of the Juridical Society on Monday evening, Mr. Denman read a very able and interesting paper on the case of Anderson, the fugitive slave. In the animated discussion which followed, the majority of speakers were decidedly against the ruling of the Court of Queen's Bench in Canada, Mr. Denman's argument being strongly to the same effect. The discussion will be resumed on the next night of meeting, after which we hope to lay before our readers some account of it, together with a summary of the paper which gave rise to it.

The *Globe* of last evening states that it was rumoured in Westminster Hall yesterday morning, that the following gentlemen will be called to the rank of Queen's Counsel previous to the Spring Circuits:—Mr. Coleridge, Mr. Karslake, Mr. Digby Seymour, M.P., Mr. Phipson, Mr. Mellish, and the Hon. George Denman, M.P.

ORAL EVIDENCE IN CHANCERY.

The substitution of a natural method (instead of a highly artificial and inconvenient one) of determining issues of fact in the Court of Chancery, has been a process of a very tedious character, which, moreover, has required no little pressure from without. Even now that a new general order of the Court has (we must admit in perfect good faith), embodied the main recommendations of the Chancery Evidence Commissioners, yet it can hardly be said that a complete victory has been gained over a cumbrous and obstinate procedure. This new general order, however, is a great instalment to the requirements of suitors and practitioners in the Court of Chancery, in a most important matter connected with the conduct of suits. Every suit involves either one or more issues of law or of fact or of both law and fact. But mere questions of law may be generally determined with a comparatively inconsiderable outlay. Where the facts are easily proved or admitted, the costs of suit are little more than the taxes imposed for the support of the court, together with the fees of counsel and the solicitor's own costs, which cannot be otherwise than trifling. But where the facts are disputed and both sides are prepared to enter upon a conflict of testimony, there is hardly any ground to form the remotest conjecture under the system now happily expiring when the affidavits, examinations, and cross-examinations of the parties would stop, or how many hundred folios of utterly irrelevant and useless matter might not be imported into the cause, under the name and pretence of evidence. Most fortunately for the suitors of the Court, and much to its own credit, this scandal will cease to exist after the 1st day of Easter Term, when the new system will come into operation. As that period is so near at hand it is desirable that solicitors should lose no time in making themselves acquainted with the important alterations which the new order will introduce into the practice of the Court of Chancery.

On and after the 1st day of next Easter Term the plaintiff or any defendant may, at any time within fourteen days after issue joined, apply by summons to the Judge in chambers for an order that the evidence in chief as to any facts or issues may be taken *viva voce* at the hearing of the cause. The judge, however, may refuse the application if he thinks it "unreasonable or made for the purpose of delay, oppression, or vexation." Where the order is made no affidavit is to be admissible at the hearing, in respect of any fact or issue included in the order; but the facts not included may be proved according to the present practice.

These are the main provisions of the new order, and while admitting their very great value we feel free to offer some observations upon them—having regard to the numerous articles which appeared last year in this Journal upon the Report of the Commissioners. Indeed, we need hardly do more than repeat the suggestions which we then offered. In the first place it is doubtful whether it will be found convenient in practice to require in every case where any party wishes to

have the evidence taken *vivâ voce*, to give to his opponent the opportunity of raising a preliminary contest at chambers upon this point; and it is difficult to understand upon what grounds such an application could be refused where there was a real contest of facts. We next doubt the policy of compelling the party applying to shape any particular issues, not coincident with his entire case, as the condition of obtaining an order for the taking of the evidence orally in open court. There is the further objection, that as to any issues prescribed by such order, no other than oral evidence will be admissible. It may thus happen that a plaintiff, having obtained an order for the determination of certain issues at the hearing, may be precluded from reading against a defendant the admissions contained in his answer, if the facts admitted happen to be comprised in the issues. Some inconvenience will also probably result from the co-existence, in the same suit, of issues which are to be determined at the same hearing, but in a very different manner. Where the judge directs certain issues of fact incommensurate with the subject of litigation, to be determined upon oral evidence, it is no doubt implied that the supplemental evidence shall be by affidavit. But if the issues of fact to be determined in one way are fixed beforehand, what reason is there why those to be determined in the other should remain vague and indefinite? and if these last-mentioned issues are not defined, it can hardly be the subject of wonder if the evidence adduced on both sides in respect of them should be frequently either imperfect or diffuse, if not both. The problem to be really solved is simple enough. No evidence, except what is of a formal character, is required where there is no dispute between the parties as to facts. It is believed on all hands, and expressly insisted upon by the Report of the Commissioners, that where material facts are contested between parties the evidence should be *vivâ voce*, and given before the tribunal which is to decide the case; the new general order impliedly proceeds upon the same presumption. What is required, therefore, is to ascertain the existence and the extent of the contest between the parties as to facts.

How is this to be done in a manner most consistent with the rights both of plaintiff and defendant? First, as to the plaintiff: he is required to state in his bill such facts as he may conceive to be necessary or advisable to obtain the relief which he seeks. Is it fair, then, or consistent with the theory of equity pleading, to ask him to tender issues of fact otherwise than he has done in his bill? It will be clearly against the doctrine and practice of the court to oblige him to do so; at all events, before he has seen the defendant's answer. But it will probably partly admit and partly deny, or confess and avoid, the case made by the bill. If the defendant were obliged to do this in a strict and technical manner—according to the course pursued in courts of common law—the plaintiff could hardly complain, and after a due course of pleading the suit would necessarily result in some definite issue. But the system of pleading in Chancery, although apparently less scientific than that of common law, is certainly more in accordance with reason and natural equity; and hitherto neither the plaintiff nor the defendant has been prevented from stating his case in comparatively untechnical and reasonable language, without being formally tied down to such strict issues (often inoperatively strict) as prevail at law. The difficulty connected with the rule contained in the new general order is that, while the same latitude of statement is allowed to both sides, whoever is interested in having the contest of fact determined orally has thrown upon him the serious responsibility of picking out distinct issues from these comparatively indefinite statements; while the other side may be equally embarrassed by the fact that such issues need not exhaust the case or insure its decision in favour of the party who succeeds upon them.

It appears to us that the simplest mode of solving the difficulty would be to allow the plaintiff in every case to prove orally such allegations of his bill as were in fact contested by the answer of the defendant or as the defendant refused otherwise to admit, and equally to allow the defendant to use oral evidence; leaving it open to both parties in all cases to resort wholly or in part to affidavits.

We entertain great doubt as to the utility of the arrangement which has been made in reference to the Examiners of the Court, and find it difficult to form any conjecture as to the utility of *ex parte* examinations before them, such examinations being deemed affidavits, and filed as such in the Office of Records and Writs.

The 23rd rule of the new General Order is also open to remark. It requires that an affidavit shall show the means of knowledge of every person making any statement contained in it, but this affords ground for a larger comment than our present space permits. On a future occasion we shall have some observations to offer upon this point.

It may be added that the main rule of the new General Order, which relates to oral evidence, appears to us to be inapplicable to petitions and motions.

We have freely observed upon some features in the new Order, which appear to us to be defects; but taken as a whole, it must be regarded as one of the most important and useful reforms ever introduced into the Court of Chancery, and we fully expect to see it followed by speedy and great results. It only requires a good system of evidence, joined to the present admirable system of pleading in courts of equity, and governed by their wise and equitable doctrines, to gain for these courts as great popularity and respect as the public odium and dislike which it was not long ago their misfortune to attract.

THE LAW OF STRIKES.

There are few social questions that have given rise to more discussion in the present age than those which affect the rights of masters and workmen. Political economists tell us that it is vain to legislate upon the subject. They say that the price of labour, like the price of everything else, ought to be regulated solely by the laws of supply and demand; and after centuries of fruitless legislation we have arrived at this conclusion at last. We leave both masters and workmen at perfect liberty to make between themselves whatever agreements they choose. We interfere only to protect those who are supposed to be unable to protect themselves, namely, women and children in factories and mines. In every other instance masters and workmen are free to enter into any engagement for the carrying on of any lawful trade or manufacture. But the liberality of modern legislation does not stop here. It is now lawful for workmen to combine for the purpose of raising wages as it is for masters to combine for the purpose of lowering them. The former, in short, are allowed to dispose of their skill and labour, and the latter of their capital to the best advantage. Such for five and thirty years has been the law of the United Kingdom.

But the freedom of action thus allowed alike to capital and labour has not had the effect of reconciling these rival interests. We need only refer to the history of the last eighteen months in confirmation of this fact. In no similar period, we believe, have so many trade strikes taken place, and upon no occasion have these strikes been organized upon a more extensive scale. It is true that the law no longer prohibits combinations of this kind. By the Act of 6 Geo. 4, c. 129, upwards of thirty statutes, some of them dating from the reign of Edward the First, were swept away. These statutes composed what were called "the combination laws,"

and they were repealed in accordance with the theories of modern legislation which have since prevailed. But the Act of Geo. 4, although it rendered trade combinations lawful for the purpose of either raising the rate of wages or of shortening the hours of work, contained very stringent provisions against intimidation in every shape. It leaves the workman at perfect liberty to combine with his fellows for a common object, provided he does so peaceably and without attempting to intimidate others. Any threat applied either to his fellow workman or to his employers is punishable by imprisonment.

There have been two instances lately in which the latter provision has been enforced. It is expressed as follows:—"If any person shall by violence to the person or property of another, or by threats or intimidation, or by molesting or in any way obstructing another, force, or endeavour to force, any journeyman or other person to depart from his hiring, &c., he shall be imprisoned, &c., for three months." Another section provides a similar penalty in case "any person shall by violence to the person or property of another, or by threats or intimidation, &c., force or endeavour to force any manufacturer or person carrying on any trade or business to make any alteration in his mode of managing such business, or to limit the number of his workmen, &c." Under the first of these provisions a workman was recently convicted and sentenced to imprisonment by one of the metropolitan magistrates for using threats for the purpose of inducing others to leave work; *Perham's case*, *Law Journal*, vol. 29, M. C. 31.* Under the second provision there was an appeal the week before last from a decision of the same magistrate to the Court of Queen's Bench; and as the circumstances of the case are peculiar, we shall, shortly, lay them before our readers.

On the 9th of June last, the appellant, William Walsby, was convicted, under the last quoted provision of the Act of George 4, for unlawfully on the 16th of May previous, by threats, endeavouring to force one Philip Anley, a builder, to limit the description of his workmen. Philip Anley, the respondent, was a builder in the city, employing about 100 workmen, and after the great metropolitan strike, which took place in 1859, Mr. Anley refused to employ for some time any workmen who declined to work under the so called "declaration," which was drawn up for their own protection by the master builders, and which was to the following effect:—"I declare that I am not now, nor will I, during my engagement with you, become a member of, or support any society, which directly or indirectly interferes with the arrangements of this or of any other establishment, or the hours or terms of labour; and that I recognise the right of employers and employed individually to make any trade engagements on which they may choose to agree." This "declaration," as our readers will recollect, proved highly objectionable to the working men, as it was obviously directed against the existence of those trade societies to which nearly all belonged. A good number of the men, nevertheless, returned to their work under the "document," as it was called, and at the time in question, there happened to be several of this description at Mr. Anley's establishment. On the 16th of May, the appellant handed to Mr. Anley a paper signed by himself and by about thirty other workmen, of which the following is a copy:—"At a meeting of the joiners in the employ of Mr. Anley, Tuesday evening, May 16, 1860, it was resolved that Mr. Anley be given to understand that, unless the men who are working under the 'declaration' in his shop be discharged, and we have a definite answer by dinner time to that effect, we leave work immediately." Mr. Anley refused to comply with this requisition on the part of the appellant, and those who signed it along with him and they all accordingly left his employment the same day. The only question was, whether the conduct of the appellant under these circumstances amounted to a "threat" within the penal provisions of the Act of George the 4th. It was contended by his counsel that no such threat as that contemplated by the Act had been committed. Every man had a perfect right to leave his employment if he chose; and the fact of the appellant having done so because his master refused to discharge an obnoxious workman, could not be regarded as a threat either against the person or the property of anyone. The Court, however, was of a different opinion. The Chief Justice in delivering judgment admitted that every man had a perfect right, in the absence of any contract to the contrary, to leave the service of his employer when he chose. He had further the right individually of giving the employer the alternative of discharging an obnoxious workman or losing his services. But in the present case it was not one but a number of workmen who made the demand in question upon the master; "and they all adopted the same course," said the Chief Justice, "with the object of preventing the master from exercising his discretion, and to coerce him." Taking the whole of their conduct into account, he was of opinion that it amounted to a threat within the meaning of the Act. Mr. Justice Crompton and Mr. Justice Hill were of the same opinion. The latter added that irrespective of the Act of Parliament, he thought the men were guilty of a conspiracy at common law.

The case of *R.* v. *Bykerdike*, 1 M. & Rob. 179, appears to be in favour of Mr. Justice Hill's view. In that case the workmen in a certain colliery objected to work with seven men employed in the same colliery. They addressed a letter to the manager to the effect that all the other workmen would strike in fourteen days, unless those men were discharged. They were indicted for a conspiracy, and Mr. Justice Patteson said, "the statute never meant to empower workmen to meet and combine for the purpose of dictating to the master whom he should employ."

But the law cannot be considered as yet settled as to what amounts to a threat under the Act of George 4th. *Walsby's case*, decided in the Court of Queen's Bench the other day, is consistent with the decision in *R.* v. *Bykerdike*, and the grounds upon which both cases were decided appear to have been the same. But there are conflicting decisions. In *R.* v. *Selsby*, 5 Cox, C C., 495, Lord Cranworth, when Baron Rolfe, laid down the following rule as to what amounted to a "threat" under the Act in question: "A great deal may be said as to the precise words used. What I think you must consider is not so much the very words, *as whether the fair result of it was to intimate to the person to whom it was addressed, that some bodily harm would happen to him.*" This is a different interpretation of the statute from that which has recently been applied to it by the Court of Queen's Bench; it is inconsistent, moreover, with that applied to it by Mr. Justice Patteson. It is clear that the latter authorities did not consider that any threat of personal injury was necessary to justify a conviction under the Act. In fact, neither in *R.* v. *Bykerdike*, nor in *Perham's case*, nor in *Walsby's*, was there such threat used.

It was said in the recent case of *Walsby*, that the workmen attempted to coerce their master, and that such coercion was illegal. But may it not be said, that every strike on the part of the workmen is an attempt to coerce their employers to come to certain terms? And yet strikes are now recognised as perfectly lawful. Where, then, are we to draw the line as to what workmen may or may not do? Lord Cranworth's definition of a "threat" is clear and intelligible; but the later decisions are not only inconsistent with it, but they unquestionably render the law both anomalous and uncertain.

* In this case the words of the threat used were, "If you dare work, we shall consider you as 'blacks,' and when we go in we shall strike against you all over London."

VOLUNTARY ANSWERS TO BILLS IN CHANCERY.

Customary practice is sometimes very useful, and, by long usage, may obtain considerable authority. But such practice may more generally be traced to an official than to a judicial construction of the rules of court, and as having been originated to meet the exigencies of a particular case, in which, probably, the parties were willing to waive all hostile considerations. Consequently, in some instances, such usage will not bear the test of a general application, nor harmonize with the express provisions of the written practice.

The customary practice with respect to the time for filing a voluntary answer to a bill is a case in point.

Rule 5 of the 37th of the Consolidated Orders (p. 120), provides that "a defendant not required to answer a bill may, without any leave of the Court, put in a plea, answer or demurrer, not demurring alone, *within fourteen days after the expiration of the time within which he might have been served with interrogatories* for his examination in answer to such bill." And rule 7 of the same Order (p. 121), provides that "where the plaintiff amends his bill without requiring an answer to the amendments, a defendant who has answered, or has not been required to answer, the original bill, but desires to answer the amended bill, must put in his answer thereto *within fourteen days after the expiration of the time within which, if an answer had been required, he might have been served with interrogatories for his examination in answer to such amended bill*, or within such further time as the judge may allow." The customary practice which has arisen upon a construction of the foregoing rules may accommodate "friendly" parties, but will not, we think, be acquiesced in by hostile litigants.

The construction alluded to assumes that "if an answer had been required," the defendant would have entered an appearance within the time limited for his appearing, and that the plaintiff would have served interrogatories within eight days after such limited time; thus allowing for the filing of a voluntary answer twenty-two days from the *last* day of the time limited for the defendant's appearance; that is, eight days to the plaintiff, and fourteen days to the defendant—in other words, thirty days from the date of the service of the bill.

Now it appears to us that such construction, generally applied, is inconsistent with rule 4 of Order 11, and altogether ignores rule 5 of the same order—upon *both* of which rules, the 5th and 7th rules of Order 37 are dependent.

The twenty-two days can be computed from the *last* day of the time limited for appearing only in cases where the appearance has been actually entered *on* that day. In all cases where the appearance is entered *after* the time limited, the plaintiff is entitled to *more* than eight days from the last day of the time limited for appearing within which to serve interrogatories.

We think that the proper construction of the rules in question is that where the appearance is entered *before* the last day of the time limited, the plaintiff is nevertheless entitled, under rule 4 of Order 11, to 8 days from the *last* day of the time limited for appearing within which to serve interrogatories; and where the appearance is entered *on*, or *after* the *last* day of the time limited for appearing he is entitled, under rule 5 of Order 11, to eight days from the day on which the appearance is actually entered within which to serve interrogatories; and that the "fourteen days" mentioned in rules 5 and 7 of Order 37 are not to be reckoned until the time within which, "if an answer had been required," the plaintiff might have served interrogatories has expired.

Or the argument may be stated thus:—An appearance must be entered. If entered *before* the last day of the time for appearing, the plaintiff has eight days *after the time limited for appearing* within which to serve interrogatories (see rule 4 of Order 11, p. 47); and the "fourteen days"—mentioned in rules 5 and 7 of Order 37, pp. 120 and 121—allowed to a defendant to file a voluntary answer, are to be computed from the expiration of such eight days. If the appearance has been entered *on* or *after* the last day of the time limited for appearing, the plaintiff has eight days from the day on which the appearance was actually entered, within which to serve interrogatories (see rules 4 and 5 of Order 11), and the "fourteen days" mentioned in rules 5 and 7 of Order 37 are to be computed from the expiration of such eight days. There need not, however, be much difficulty experienced in properly determining the time for filing a voluntary answer in an original bill, because an appearance is generally required, and is enforceable to an original bill. The case is, however, very different with respect to the time for filing a voluntary answer to an amended bill.

It has been shown that rules 5 and 7 of Order 37 are, in their construction, dependent upon rules 4 and 5 of Order 11, and that rules 4 and 5 of Order 11 involve, in their construction, the necessity of an appearance being entered. The provisions of the rules in question are, therefore, inapplicable to the case of a voluntary answer to an amended bill. For where the plaintiff amends the bill without requring an answer to the amendments, the entry of an appearance is not required. And an appearance not being required, and therefore not entered, the time for serving interrogatories is not fixed, and cannot therefore determine—consequently the "fourteen days" after that time for filing a voluntary answer to an amended bill have no commencement, and therefore no termination; and here is a difficulty of which either plaintiff or defendant may claim to take advantage, according as any adverse proceeding may be attempted by the one party against the other.

The difficulty would be removed by the defendant's *volunteering* an appearance. But in a strict examination of a rule of court—as applicable to hostile parties—a *voluntary* proceeding is not to be assumed; and it appears to us that, in the absence of such an appearance, a suit in which the bill has been amended without an answer being required to the amendment is, as between hostile parties, completely shut up. To repeat the argument, the case stands thus:—If the plaintiff's time within which, an answer being required, he might serve interrogatories, has not been fixed, it cannot be determined, and therefore the "fourteen days" after that time allowed to the defendant to file a voluntary answer have not commenced, and cannot therefore have expired—consequently the plaintiff cannot shut out a voluntary answer by proceeding with his cause—and the time within which the defendant "might have put in an answer" not having expired, the "*one week*" after such time (see art. 1 of rule 12 of Order 33 of the Consolidated Orders, p. 101), within which the plaintiff is bound to proceed with the cause has not commenced, and cannot, therefore, have expired—consequently the defendant cannot move to dismiss for want of prosecution.

It only remains to suggest a remedy. The difficulties stated in the foregoing remarks, arising out of the rules of court as at present framed, may be removed by simply abrogating rules 5 and 7 of Order 37, and providing, in lieu thereof, that a voluntary answer, either to an original or to an amended bill, shall be filed within a limited time after service of the bill.

We take this opportunity of adding that it would be useful also to provide that in cases where a defendant is required to appear to a bill, and he is served with a copy of the bill and of the interrogatories, at the same time (which in some cases is very convenient and saves expense) the computation of such defendant's time for answering shall commence on the day following next after the last day of the time limited for his appearance, and not from the date of the delivery of the interrogatories, thus securing, by general

order, and not merely allowing by customary practice, that the defendant shall have his full time for appearing and for answering.

PAR NOBILE FRATRUM.

Two cases which have recently come before the courts at Westminster suggest some grave reflections to both of the great branches of the legal profession, in respect of the admission of law students and articled clerks. In one of these cases it appeared that both the plaintiff and defendant professed to be students for the bar, and were, in fact, members of the Society of Gray's-inn. The action was brought to recover a few pounds, which the plaintiff stated he had lent the defendant. His defence was, that he had a set-off for a cloak and an American rocking chair, sold by him to the plaintiff; and also that the latter had made some overcharges in a very strange and complicated account between the parties. According to the plaintiff's own account, having passed the greater part of his life in America, he returned to this country five years ago, and through the exertions of Nicholson, the defendant, was entered upon the books of the Ancient and Honourable Society of Gray's-inn, as a student for the bar. Thereupon very intimate relations were established between the parties, and pecuniary transactions of a most curious character took place between them. It appeared from the evidence that David, the plaintiff, was a person of such antecedents as make it difficult to understand his influence directly or indirectly with the Benchers of Gray's-inn, amongst whom are some distinguished and many highly honourable men. The meagre report of the case which appeared in the morning journals does not enable us to present our readers with anything like a complete biography of this gentleman. Here and there, however, in his cross-examination ugly facts crop up in such abundance as to leave little room for doubt that much of a similar character, although irrelevant to the issue between the parties, might be brought to light by further and more general inquiry, such as one might suppose it was the duty under the circumstances of any Inn of Court to institute. Apart from a scandalously immoral private life, it came out upon the cross-examination of David that he had been charged in America with having forged a bill for £1,000, and that he now has an office in Buckingham-street, Strand, "where he gives out that he is ready to make investments." It further appeared that Nicholson, to whom Gray's-inn was, as we have mentioned, indebted for adding the name of David to its roll, had on some former occasion preferred a charge against David, or Keller, or De Keller, as he was then sometimes called, of "having buried a lady under a false name; according to the certificate she was described as the wife of Henry De Keller." The truth appeared to be that she was a mistress of David, who for the time assumed her name together with the embellishment of an aristocratic prefix.

Now we cannot help thinking that notwithstanding the charge of forgery in America had been dismissed for want of evidence, and although he may have denied with truth that he ever "held himself out as physician to the Queen of the Brazils"—in short, admitting that all the strange and doubtful circumstances attending his early and errant career might possibly be justified or explained to the satisfaction of a Judge of Virtue and a jury of moralists—yet the just ground of complaint remains that such a person was admitted without any inquiry whatever, on the payment of a few pounds, as a candidate for the highest branch of an honourable profession, and as the associate of a body of men who ought to be, and generally are, distinguished, not less by gentlemanly conduct than by their intellectual endowments. It is surely time for so great a disgrace to be removed from the bar and the Inns of Court. If those who rule over the destinies of the bar think it unnecessary to institute any preliminary test of educational fitness in persons offering themselves as students of the Inns of Court, the least that the profession and the public have a right to demand of them is, that there should be such an inquiry into the character of these candidates as would ensure to some extent the rejection of men like this Mr. David, at all events until they were able to give a more satisfactory account of themselves than he gave before a Court of Nisi Prius the other day. We may add that even although the Benchers of Gray's Inn think it unnecessary to adopt this suggestion, they may, nevertheless, be induced to consider the question, whether they gain much credit by the fact that they number among their members men who ply the disreputable trade of money lenders, and that not with shame-faced secrecy, but in the face of day—in public offices, situate in the great thoroughfare daily traversed by members of both branches of the profession who frequent Westminster Hall. But if the society of Gray's-inn, regardless of public opinion, and only solicitous of adding to its revenue, persists in receiving into its bosom, without inquiry, men whose names have been notoriously mixed up with disreputable pursuits,

> ——— pharmacopolæ
> Mendici, mimi, balatrones, hoc genus omne,

it cannot be surprised if its own reputation is damaged by such degrading associations.

We now turn to a case of a cognate character in which the Incorporated Law Society will have to take the position from which we are content at present to dismiss the Benchers of Gray's-inn, and one Mr. William Henry Hudson will step into the place of Mr. David, to whom we care not to allude again. There was tried at Westminster, on Wednesday last, an action brought to recover the sum of fifty guineas which was paid as a deposit upon a treaty for the purchase of a horse, as a morning paper quietly adds, "under very singular circumstances." They were shortly as follows:—

On the 24th of October last, Mr. Tipping, a gentleman residing near Sevenoaks, was induced, by an advertisement in the *Times*, to go to a certain place called the "Paragon Livery Stables," at Hackney—where Croft (the defendant to the action) was then carrying on the business of a livery stable-keeper and riding master—for the purpose of seeing a certain "bright chesnut horse" described in the advertisement, and therein announced for sale. On arriving at the stables, Mr. Tipping saw a man just mounting a horse, which, on inquiry, turned out to be the identical "bright chesnut" of the advertisement. After some conversation it was arranged that the horse should be submitted to the inspection of Mr. Tipping's veterinary surgeon in the country, and the man then asked Mr. Tipping to give him a cheque for the amount of the value of the horse as a deposit. Mr. Tipping accordingly signed a cheque for fifty guineas, never dreaming but that he had been negotiating with the defendant Croft, instead of Hudson, as it afterwards turned out. The veritable Croft, however, was standing by all the while and not interfering. The horse, on inspection, proved to be far from satisfactory, and was accordingly returned to the defendant's stable; but was refused admittance by the defendant on the ground that "his brother was not at home." After considerable difficulty the animal was taken in, but the defendant wrote to Mr. Tipping telling him that it would stand there at his expense; as he had bought it, and as the defendant was not going to take it back. Mr. Tipping, therefore, brought his action for breach of contract; but, as the defendant put in a plea of infancy, the plaintiff afterwards inserted a count in the declaration for fraudulent misrepresentation and appropriation of the fifty guineas paid as a deposit. It

appeared from the evidence of Hudson, who was put into the box to meet the plaintiff's case, that he used to go to the defendant's stables to ride, and that on the 24th of October last, just as he was going to mount the "bright chesnut horse," the plaintiff came in, and after some talk, handed Hudson a cheque in the presence of the defendant. On cross-examination, Hudson stated that he had been for four years an articled clerk to a solicitor; that previously he had been a sheriff's officer; that he had lent money to the defendant to start the business at Hackney; and that he had not been absent from the stables for more than two days during the two months preceding the 24th of October; that the "bright chesnut horse" had been bought at Aldridge's for £27 in the August preceding; that Hudson had pressed the defendant for payment of his debt, and had told him that he must sell a horse to do so. Accordingly, the advertisement was drawn up between them; and when the cheque was cashed, which was on the same day that it was signed, he received £35 out of the amount on account of his debt. He admitted that he suggested the plea of infancy after the action was brought; that he most likely told the defendant to put it on the record; that the defendant and he were often taken for brothers; and that when he was asked where his brother was, he might have said "that he was out," &c., &c.

The defendant Croft stated that he did not speak to plaintiff during the time he was at the stables. He led the horse out, but did not act as groom. He would not swear that he did not see Mr. Hudson take up one of the cards in the office with the defendant's name on it and give it to the plaintiff as Hudson's own card. Sometimes Hudson passed as his brother, and answered to the name of Croft.

At the close of the defendant's evidence the jury intimated that they had made up their minds, and on being interrogated by the judge said that they were prepared to go to the extent of finding that the whole transaction on the defendant's part was a fraud to cheat the plaintiff out of his money; and a verdict was taken for the plaintiff accordingly, with fifty guineas damages.

These facts and this verdict speak for themselves, and require no comment from us. It is not likely that such a person as Hudson would ever have had the opportunity of being a disgrace to the general body of articled clerks if his admission into it was made dependent upon the result of suitable preliminary inquiry. It is very improbable that this quondam sheriff's officer and practising jockey could have passed a suitable examination in either law or literature; but as nothing of the kind was required of him he had of course no difficulty in obtaining his articles, and thereby an opportunity, during the space of five years at least, of discrediting a class to which he ought never have been allowed to belong.

The act of last session has provided for the institution of an examination to be passed either before *or* during articles of clerkship. We earnestly hope it will be made a *sine qua non* of *admission* under articles; and that before long the profession may have some guarantee, in the shape of occasional examinations during articles, of the impossibility of an articled clerk devoting his time to the business of an ostler and the chicanery of horse dealing. Meanwhile, as Hudson has been deprived of the brotherhood of the infant Croft, we suggest to his fraternal regards the still more attractive claims of the enterprising plaintiff in the cause of *David* v. *Nicholson*.

It is stated that the claim which was made for both English and Indian income-tax upon Indian stock held in this country has been abandoned.

The English Law of Domicil.

(By Oliver Stephen Round, Esq., of Lincoln's-inn, *Barrister-at-law*.

VI. (*Continued*).

Compulsory Domicil.

At the conclusion of the former article, reference was made to the case of *Ringer* v. *Churchill*, and an extract given from the statement of the case by Lord Justice Clerk, with his observations thereon, particularly upon the two propositions, that the Court has no jurisdiction where the defender is not domiciled in Scotland, and that a merely fictitious decree cannot be given on account of acts done in a foreign country. His lordship continued, "In considering whether both or either of these propositions are well founded, as they involve the validity of the domicil referred to by both parties in this case, I feel it to be necessary to keep in view what the rule of law is in regard to the domicil of a wife. I cannot then entertain any doubt that the *dictum* of *Lord Stair* authoritatively settles the point, as in treating of the relation of husband and wife he expresses himself in these plain words, 'her abode and domicil followeth his;' and were anything else required in confirmation of this unequivocal expression, we see it very recently recognised in the clear opinions delivered in the House of Lords in the case of Warrender. It is no doubt perfectly true that in that case, reference was particularly made to the settled and permanent domicil of the party pursuer, as a landed proprietor residing in Scotland, but the opinion of *Lord Stair* is expressed without any qualification as to whether the husband's domicil is permanent or temporary, when he states that the wife's domicil follows his, and in the cases of *Forbes & Levett*, where the domicil was objected to as merely temporary, (Fergusson, p. 422), *Lord Pitmilly*, whilst deciding against any inquiry into the domicil of the pursuer, observed that in these two cases the pursuers were wives, whose domicil, except in the case of a regular separation, follows that of the husband. And no case has decided in reference to a domicil constituted by a residence of forty days and upwards within the territory of Scotland, that the domicil of a husband is not also to be held as that of his wife, or that she is to be considered as domiciled elsewhere and apart from him. If her domicil follows that of her husband it seems equally the same whether his domicil is temporary or permanent, and it has been shown that the rule has been declared in every case to apply *only* to the domicil of the husband which fixes his succession. The domicil of the wife, though in the view of law held to be that of the husband does not, however, avoid the necessity in such an action, of making her fully apprised of the proceedings instituted against her, if she happens to be beyond the territory in which her husband has acquired a legal domicil." His lordship then referred to the question whether the defender had had sufficient citation or notice of the action of divorce, and stated *Lord Brougham's* opinion in the case of *Warrender* v. *Warrender* (2 Cl. & Fin. 520), that the Scotch courts have jurisdiction in divorce, in a case where a formal domicil has been acquired by temporary residence without regard to the native country of the parties, the place of the ordinary residence, or the country where the marriage may have been had.

It will be seen that a great portion of this case turned upon the question of jurisdiction, in which the technicalities of the Scotch law make a prominent figure; but the English reader will not fail to have observed one great peculiarity with respect to the light in which the Scotch courts look upon domicil, namely, that for some, and those purely legal purposes, they recognize a species of domicil which the English law does not admit, a domicil very analogous to the fifteen days' residence within a parish

or district which enables a party to publish his or her banns there, and which invests a foreigner (not being, I presume, an alien) with the power of suing for some purposes as a domiciled Scotchman in the courts of that Kingdom; and it is likewise remarkable that this power is not a mere phantom or shadow and fiction of law, but goes to a very vital part of it, and one in which it differs most materially from that of other countries, namely, in the law of marriage. If any further illustration were needed after what has been elsewhere adverted to in these pages with respect to the identity of the old word "settlement," and the modern word "domicil," this certainly would serve, I think, as a very strong one, for in both cases of forty days' residence in the territory of Scotland, and fifteen days or three Sundays' residence in a parish or district in England, the sole object is to acquire a particular legal *status, et præterea nihil.* In reference to this it may be as well to insert a few words which fell from *Lord Jeffery* in the case under discussion when he came to deliver his opinion. "I consider," (he says), "that when the word domicil is used to describe residence of forty days which subjects a man *passivé* to the courts of this country, it is really used in a sense which may be called metaphorical, it certainly is not used in the genuine and appropriate sense to which the well-known definition of the civilians applies: *Locus ubiquisque larem suum posuit sedemque fortunarum suarum; unde cum proficiscitur peregrinare videtur, quo cum revertitur, redire domum.*" In the genuine domicil of a party his proper home is always included, it is where the seat and centre of his family and affairs are habitually placed. It is true that in a certain loose sense, a man may be said to have a domicil wherever he has a residence, and if a party has had a residence in Scotland for forty days, it is now a settled rule of the Scotch law, that he thereby becomes liable to answer in the Scotch courts as if domiciled there.

It is true hat the doctrine is, that the domicil of the husband is the domicil of the wife; but the doctrine rests on the plain and reasonable presumption of fact; it is not a mere arbitary *dictum* which is to be pushed as far as the mere letter can be carried without reference to its true sense and import; it is a doctrine founded on the presumption generally consistent with truth, certainly derived from regard to conjugal duty; that a wife always ought to be with her family. "Suppose," said Lord Jeffery, "that a married Englishman is sent to Scotland along with his regiment, or as a commissioner appointed to conduct some public inquiry, as soon as he has been for forty days in Scotland he would become amenable to our jurisdiction; but if his wife was left behind in England where his family is, and where his proper home *ex hypothesi* continues to be, can it be held that she is thereby also amenable to the jurisdiction of this court? Notwithstanding the strict nicety of the *societas vitæ* implied in the state of matrimony, in the eye of the law, I cannot see any ground whatever for holding that she would be bound to answer in our courts. Her *forum* remains the *forum* of her husband's proper domicil, and in the case now supposed the domicil never has been elsewhere than in England." His lordship was therefore of opinion that there was no jurisdiction in the Scotch courts. *Lord Cockburn* concurred in this, but *Lord Meadowbank* thought that there was, but in the *minority*. *Lord Medwyn* expressed himself to the effect that *Lord Stair's* opinion was only meant to apply to a proper domicil, not a temporary one, and that there was no jurisdiction, and *Lord Moncrieff* concurred, observing that in the case of *Colquhoun;* "Faculty," Coll. clv. vol. xiii., 347; "Morrison's Dict. App. Husband and Wife," No. 5, it was held that the husband was entitled to fix an abode for his wife *different* from his, but even when he did so, that he did not thereby change her legal domicil; but his own proper permanent *home*, remained in law her domicil, *because it was his.* But as the rule holds good only with respect to the proper and permanent domicil of the husband, the result is that a husband by gaining a temporary domicil of forty days does not thereby make that the domicil of his wife. A domicil of forty days has no *animus remanendi. Lord Cuninghame* considered that the conjugal rights of spouses, and the legitimate conditions and rights of children are not fit subjects of cognizance in a foreign court, but are peculiarly appropriated to the courts of the country where the marriage, and where the parties permanently reside and carry on their business. In this *Lord Murray* concurred, and therefore the majority of the Court were against the proposition of there being jurisdiction. I have gone thus at length into this case of *Ringer* v. *Churchill*, not by reason of the question of jurisdiction, barely as such, but because it has, as I conceive, a most important connection with the question of a wife's domicil, and all the observations that I have quoted bear, in some degree, upon that question; as do the following cases, the whole law on the point being collected in the last; *Reid, M'Call, & Co.*, v. *Douglas*, 11th June, 1814; 17 "Fac dec." 643; see also *Forrester* v. *Watson*, Dec. Court of Sess., vol. vi., 2nd series, 1358; *Grant* v. *Peddie*, 1 W. & S. 716; *Pirie* v. *Lunan*, Morrison, 4594; *French* v. *Pilcher*, ibid. app. *forum competens*, No. 1; *Wych* v. *Blount*, ibid. app. No. 2; *Alison* v. *Catley*, 1 Dunlop, 1025; *Yelverton* v. *Yelverton*, 1 Smith & Sew. Div. Cas. 49; *Dolphin* v. *Robins*, 7 Ho. of Lds. 390. The first case of *Forrester* v. *Watson*, has reference to the jurisdiction of the Scotch courts in the case of temporary domicil of a husband in Scotland where the wife after separation had obtained a domicil, and been sued for adultery committed in Scotland.

The case of a servant involves another species of compulsory, or involuntary domicil: and the same question has often arisen whether servants of the Crown or of some large public body holding official situations in various parts of the world, came within this category, and the tenure again upon which they held their positions was also an important element in the consideration. This applies chiefly to the case of officers both naval and military upon half-pay, both in the service of the Government and of the East India Company. The case of *Cockerell* v. *Cockerell*, 4 W. R., p. 730, which I have referred to upon this subject in another part of these pages, laid down the law distinctly that the mere continued receipt of half-pay, where other circumstances went to constitute an acquired domicil other than that of origin, was not sufficient either to form a compulsory domicil in another country, or to prevent the acquirement there of a domicil of choice. In the case of *The Commissioners of Inland Revenue* v. *Gordon's executors*, Dec. of Court of Sess., vol. xii., p. 657, Mr. Gordon, a native of Scotland, entered the English navy in 1813, at the age of thirteen, and was engaged in active service till the year 1822, when he retired on half-pay. After his retirement he resided in lodgings in Jersey, till 1834, when he went to reside at Tortola, one of the Virgin Islands, having been appointed a stipendiary magistrate there under the Act for the emancipation of Negro slaves, the provisions of which expired in 1841. He subsequently was appointed president and senior member of the Council of the Virgin Islands, an office to which no salary is attached. In 1839, he got leave of absence and came to Scotland, on a visit to his relations. He married a Scotch lady, and was on his return with her to Tortola, when he died at St. Kitt's, in June, 1840. Mr Gordon continued to receive his half-pay till his death. By the regulations of the service, naval officers on half-pay are required to reside in Great Britain unless they have obtained leave of absence, and they are liable to be called upon for active service at any time after six months' notice in the Gazette. The Crown had claimed legacy duty upon the ground of an English

domicil, but upon these facts it was held that Mr. Gordon had acquired a domicil at Tortola, and therefore that his estate was not liable to legacy duty; *vid. Thompson* v. *The Advocate-General*, 13 Sim. 153; 12 Cl. & Fin. 1; 4 Bell App. Cases 1. The wife was also dead, and the *Lord Ordinary* found that her domicil followed that of her husband, and was at Tortola also.

(*To be Continued*).

The Courts, Appointments, Promotions, Vacancies, &c.

ROLLS' COURT.

(Before the Master of the Rolls.)

Feb. 7.—Business of the Court.—After giving judgment in a special case, which was of no interest to the public,

His Honour said, It is proper that I should inform the gentlemen of the bar, at the earliest time that I have been able to ascertain the state of my paper, that after the causes which are in my paper to-day have been disposed of, there are only nine which are ripe for hearing. I do not see any prospect, in the present state of the business, of the Court being fully engaged during this, which is usually the most laborious and severe, period of the year. The state of the cause lists before the Vice-Chancellors is such that there is no more business than can be reasonably disposed of by them, and I cannot therefore properly ask for a transfer of causes. This is the first time that such a state of things has occurred since I have had the honour of occupying this seat, and although it would certainly be more agreeable to myself, and probably also to the bar, to be fully occupied, yet I cannot but say that it denotes a very wholesome state of the Court of Chancery that one of the courts has not sufficient business to keep it in motion. This state of things may, perhaps, also arise from the assistance which the Court receives from the bar in disposing of the business before it, as well as from the unprecedentedly light character of that business. I have made this statement at the earliest opportunity for the convenience of the bar and the information of the public. I believe there are only fifty causes set down for the whole period of the sittings.

COURT OF COMMON PLEAS.

(Before the Lord Chief Justice.)

Feb. 6.—Lord Enfield, attended by the Hon. George Waldegrave, the Speaker's Secretary, came into court to complain of his having been summoned as a juror to attend the court. Mr. Edwin James, on behalf of Lord Enfield, stated that it was not his wish to make a complaint in his place in the House of Commons, but his lordship preferred to submit to the court that he ought not to have been served with a summons, as he was free from liability to attendance on a jury, owing to his duties as a member of the House of Commons, which ought to have been well known by the summoning officer.

The Lord Chief Justice said that the officers of the court had no authority to remove his lordship's name from the jury-book. The parish officers had the duty of making up the lists, and they did not always take cognisance of the result of the last election. He would state, however, that his lordship ought not to have been summoned as a juror, as members of Parliament were not bound to serve in any other court than that in which they had been returned to serve—namely, the High Court of Parliament, which was the highest court of the realm.

Lord Enfield and Mr Waldegrave having thanked his lordship for so clearly expressing the undoubted privilege of members of Parliament, retired.

COURT FOR DIVORCE & MATRIMONIAL CAUSES.

(Before the Judge Ordinary.)

Feb. 1.—*Cubley* v. *Cubley and Smith.*—The petition in this case was by a husband for a dissolution of marriage, and a decree *nisi* was pronounced. An application was then made for an order for a permanent allowance to the wife. Alimony *pendente lite* had been awarded her at the rate of £30 a year. She prayed for the custody of her child, aged two years, and the petitioner stated in his pleadings his consent that she should retain it.

His Lordship directed that the respondent should retain the custody of the child until further order, and that the petitioner should pay her 5s. a-week for its maintenance. He was not disposed to make the petitioner maintain her and her paramour. His lordship added that it had been suggested by the registrar that he had no power to make a final order as to the child's custody until after the final decree, and as the decree would not now become final until the expiration of three months, the order must be an interim order, under the 35th section of the Act. Some very pleasant questions would arise before long under the statute of last session. Would alimony *pendente lite* cease when the decree *nisi* was pronounced? At what time would the parties who had obtained a decree *nisi* have the privilege of marrying again? If a husband died between the decree *nisi* and the absolute decree, would the wife be treated as a widow, and entitled to a share of his property? Or would the suit be abated by the husband's death in the interval, so as to deprive the wife's proctor of his costs? The suit might not be at an end, for cause might be shown in the course of three months, and the petition might in the result be dismissed. Then were the material facts which might be brought before the Court only those facts which were within the knowledge of the parties, and which they had the means of bringing before the Court, or facts which had been discovered since the decree *nisi*? These questions would no doubt furnish them with a reasonable amount of occupation.

It was submitted that the respondent was not entitled both to the alimony *pendente lite* and to the 5s. a-week until the final decree.

The Judge Ordinary.—She must make her election.

The respondent elected to retain the alimony.

Business of the Court.

The Court will not proceed with the list of petitions for dissolution until the 18th inst. During the last sittings the Court disposed of 57 petitions, including those which were withdrawn and those which stand for judgment.

MIDDLESEX SESSIONS.

Feb. 4.—The February general sessions commenced this morning at the Court-house on Clerkenwell-green, before Mr. Bodkin, the Assistant-Judge, Mr. Payne, Deputy, Mr. Powell, chairman of the bench, and a full bench of magistrates.

COURT OF ALDERMEN.

At a meeting of the Court on the 5th inst., on the motion of Mr. Alderman Wilson, seconded by Sir R. Carden, it was ordered that a copy of the seventh edition of "The Magisterial Synopsis," edited by Mr. George C. Oke, the assistant clerk to the Lord Mayor at the Mansion-house, be presented to each member of the Court.

Mr. Robert Edmund Mellersh, of Godalming, Surrey, has been appointed a perpetual commissioner for taking the acknowledgments of deeds by married women, for the counties of Surrey and Sussex.

Mr. Richard Stubbs, of Bristol, has been appointed a perpetual commissioner for taking the acknowledgments of deeds by married women for the counties of Somerset and Gloucester.

Recent Decisions.

EQUITY.

Practice—Motion for Receiver before Hearing.

Pare v. *Clegg*, M.R., 9 W. R. 216.

In this case the Master of the Rolls decided that the Court would not appoint a receiver upon a motion before decree, the bill not having prayed that a receiver might be appointed. It has been long understood, that where an injunction or a receiver may be required in a cause before it comes on for hearing, the proper course is to have a specific prayer to that effect in the bill. Although very frequently an injunction or the appointment of a receiver by the Court is *festinum remedium*, and is obtained upon an interlocutory application; yet both, at all events the appointment of a receiver, may some-

times be regarded as substantive relief, and ought, therefore, to be the subject of an explicit prayer, so as to give the defendant at the earliest moment due notice of the case to be made against him. Indeed, according to the practice before 1852, it is doubtful whether the Court ever appointed a receiver, except upon bill (or claim) filed for that purpose; and so strictly was this practice observed, that if a defendant (and although he was in the same interest as the plaintiff) desired the appointment of a receiver, he must, for that purpose, have filed a cross bill. Where the bill, however, contained a prayer for a receiver, although it might have been refused upon the hearing of the cause, yet a renewed application might be made if, in any further stage of the cause, the appointment of a receiver was desirable. In the last edition of Dan. Chy. Prac., p. 995, it is laid down, however, that it is not in all cases absolutely requisite that the bill should contain a prayer for the appointment of a receiver. It is stated, that "if the facts of the case authorize, the Court may appoint a receiver, although there is no prayer to that effect in the bill." But the cases upon which this statement is alleged to be founded are not sufficient for the purpose. In the report of the first, *Ramsbottom* v. *Freeman*, 4 Beav. 145, it does not appear whether a receiver was prayed for by the bill. Neither in *Hart* v. *Tulk*, 6 Hare 611, does it in fact appear whether the bill contained such prayer. The same remark applies to *Dowling* v. *Hudson*, 14 Bea. 423. In *Ramsbottom* v. *Freeman*, *Hart* v. *Tulk*, and *Dowling* v. *Hudson*, the question was, whether notice of motion for a receiver might be served upon defendants, before appearance. The only case cited by Mr. Headlam, the editor of the last edition of "Daniel," which at all appears to sanction the account which he has given of the practice of the Court in this respect is *Meaden* v. *Sealey*, 6 Hare, 620, in which Sir James Wigram, V.C., gave the plaintiff leave to serve a defendant, before appearance, with notice of motion for receiver. But although it does not appear from Mr. Hare's report that a receiver was prayed for by the bill in that case, yet it is stated that the bill asked for an injunction—a remedy of a reciprocal character being intended to prevent a threatened wrong, the object of receiver being to protect the property pending litigation. Thus we find that the practice of the Court is not correctly laid down upon this subject in the last edition of Daniel's Chancery Practice; and our readers may remember that upon the appearance of the work we warned them* that "it was one of the most dangerous books which a solicitor could place upon his shelves." Subsequent experience has justified this condemnation, which, perhaps, at the time was considered too strong. In this case, the passage which we have quoted appears to have misled the plaintiff in *Pare* v. *Clegg* into a futile motion, of which he had to pay the costs. Sir J. Romilly, M.R., observing that the "practice was not as stated in the passage cited;" but that "on a motion before a decree for a receiver, the appointment of a receiver ought to have been prayed for by the bill."

The question has been raised whether a receiver could be appointed at chambers in a summons suit. In *Grote* v. *Bing*, 9 Hare, App. l., Sir J. Stuart, V.C., decided that where the application for the appointment of a receiver is made for the first time in a cause, it must be heard in court; but where the application is only to supply the place of a receiver already appointed, and whose office has become vacant by death or otherwise, it may be made at chambers. In a subsequent case, however, *Brooker* v. *Brooker*, 5 W. R. 382,† the same learned judge was of opinion that he had jurisdiction under the Chancery Amendment Act, 1852, s. 45, without bill filed to appoint a receiver, after an order had been made for administration upon summons at chambers—the ground of his Honour's decision being that such an order had all the effect of the ordinary administration decree, made at the hearing of a suit instituted by bill, and that the Court had been in the habit of interfering by granting an injunction or appointing a receiver, (although neither relief was prayed for), where a decree had been made in the suit. We are not aware whether this case has been since followed. Indeed, it appears to be in principle somewhat opposed to the ruling of Sir R. T. Kindersley, V.C., in *Partington* v. *Reynolds*, 6 W. R. 388, and of Sir W. P. Wood, V.C., in *Sleight* v. *Lawson*, 5 W. R. 589. But whatever may be the practice in summons suits, *Pare* v. *Clegg* is a distinct enunciation of the rule that in suits instituted by bill, the Court will not appoint a receiver before decree unless where the appointment of a receiver is part of the prayer of the bill.

* 1 Sol. Jour. 296—315.

† On this case, see Recent Decisions in Chancery, 2 Sol. Jour. 435.

REAL PROPERTY AND CONVEYANCING.

DEVISE SUBJECT TO PAYMENT OF DEBTS—IMPLIED POWER OF SALE BY EXECUTORS.

Hodkinson v. *Quinn*, 9 W. R. 197.

This decision of Wood, V.C., adds another to a long list of cases bearing on the much controverted question—namely, how far, and under what circumstances, a general charge of debts upon real estates authorizes a sale of the estate by the executors? The authorities on the question, up to a recent date (1858), are collected in White & Tudor's Leading Cases, vol. i., 2nd ed., pp. 71-77; and a short epitome of the decisions is all that is necessary to show the present bearings of the question. Sir L. Shadwell held, in 1843, that "if a testator charges his real estate with payment of his debts, that *primâ facie* gives his executors POWER TO SELL the estate, and to give a good discharge for the purchase-money" (*Forbes* v. *Peacock*, 12 Sim. 541). In another case, where there was a direction in a will amounting to a general charge of debts on all the testator's real estates; and the question was, whether the trustees and executors together could make a title to the purchaser of that part of the estate which was devised to the trustees for special purposes, Lord Langdale considered that such a charge ought to be treated as a trust which gave the creditors a priority over the special objects of the devise; and that, as the Court, on the application of creditors, would compel the trustees to raise the necessary money, there was no reason to doubt that the trustees and executors might themselves do that which the Court would compel them to do on the application of the creditors (*Shaw* v. *Borrer*, 1 Keen, 559). This case was approved by Lord Cottenham, who observes that a charge of debts is equivalent to a trust to sell so much as may be sufficient to pay them (*Ball* v. *Harris*, 4 M. & Cr. 264). In these two last-mentioned cases, the difficulty which arises when the sale by the executor has to be effected in the absence of the owner of the legal estate, did not occur. That question was discussed in *Gosling* v. *Carter*, 1 Coll. 644; where Knight Bruce, V.C., held that, the executors proceeding to sell the real estate by auction under a general direction for payment of debts, the purchaser was not to be compelled to complete the purchase without a conveyance from the heir-at-law. In *Curtis* v. *Fulbrook* (8 Hare, 278), where there was a general devise of real and personal estate to H. for life, and then a devise of certain copyholds to B., and a direction that on the decease of B., the copyholds should be sold and the money distributed, on a bill filed after the death of A. and B., by the persons interested, against the executors and customary heir for a sale, the V.C. Wigram held that the executors were necessary parties to the conveyance, without absolutely deciding the question that they had an implied power of sale. In this case, however, it appears there was no direction whatever as to payment of debts. The important decision of *Doe* v. *Hughes*, 6 Ex. 223, is the next in order, where the rule was emphatically laid down by a court of judges, comprising Barons Parke and Alderson, that "an executor has no implied power to sell a mortgage land which descends to the heir charged *simpliciter* with the payment of debts." This case is hitherto undisturbed by authority, and remains an exposition of legal doctrine, of the greatest weight. *Doe* v. *Hughes*, however, though unreversed, is at least modified in its consequences by subsequent decisions. Thus in *Robinson* v. *Lowater*, 17 Beav. 592, the testator, after devising his N. estate, gave his estate S. to his son R. for life, with remainder over. He further charged his personal estate with payment of a mortgage debt outstanding upon N., and of legacies and debts. If the personalty should be insufficient for the purpose, he charged the S. estate with the deficiency, and appointed R. his sole executor. The son proved the will, and exhausted the personalty in the payment of debts, the mortgage debt upon N. remaining unsatisfied. Afterwards R. sold the S. property to a person who took with full notice of the will, and through whom the defendant claimed. The plaintiffs, who were devisees of the N. estate, filed a bill insisting that the S. estate was still liable in the hands of the defendant to pay off the mortgage on the N. property. The Master of the Rolls dismissed the bill with costs. After referring to the cases, he said he was of opinion that a good title was made to the purchaser, and that the defendants were entitled to hold it, discharged of all claim in favour of the plaintiffs. This decision was upheld on appeal. Knight Bruce, L.J., said: "Does the case of *Doe* v. *Hughes* deal with anything beyond the question of the legal estate? Can it govern the present, which is an application to a court of equity to give effect to a charge?" Turner, L.J., said that the question was, how and by whom the money was to be raised. The

purpose was to pay debts; therefore, it would have to be raised immediately, but no power was given to the devisees, and the devisees during the existence of the life estate, with contingent remainders, could have no power themselves to raise it. On the face of the will, therefore, it appeared to be the intention of the testator that the money should be raised by the executor. *Robinson* v. *Lowater* was followed by *Storry* v. *Walsh*, 18 Beav. 539. The Master of the Rolls there said, "There is no question that this Court holds that if an estate is charged with the payment of debts, the executor can make a good title to a purchaser by sale of that estate. There is also no question that if the estate is charged with the payment of certain specified scheduled debts the purchaser is bound to see that they are paid. It is equally clear that if the estate is charged with the payment of legacies generally, which legacies are necessarily specified, then also the purchaser must see to the application of the purchase money; but if it is charged with the payment of debts and legacies, he is not bound to see to such application, because the legacies are not payable until after the debts." In *Wrigley* v. *Sykes*, 21 Beav. 337, where a testator directed his debts and legacies to be paid out of his real and personal estate, and then devised certain freehold messuages for a term of years, of which one of the trusts was that on refusal by any of the beneficiaries of the term to pay his share of the debts, &c., within twenty days, there should be a peremptory sale, and after a lapse of thirty-three years from the death of the testator the surviving executors sold the estate, as they alleged, to pay the debts, the Master of the Rolls held they had power to sell, and decreed specific performance against the purchasers. The conclusion drawn by Messrs. White & Tudor is this:—That when there is a general charge of debts upon real estate the executors have in equity an implied power to sell it, and they alone can give a valid receipt for the purchase money; yet, as they do not take by implication a legal power to sell, the persons in whom the legal estate is vested must concur with them in the conveyance. They add, "The opinion amongst conveyancers, nevertheless, seems to be that when, subject to a charge of debts, an estate is devised to persons either beneficially, or as trustees for special purposes, a sale can be effected by them alone." Mr. Clayton, in his Elements of Conveyancing, pp. 104—112, relying upon *Robinson* v. *Lowater*, supports the view that a sale may be worked out by the executors alone when there is a general charge of debts; though he admits that the charge ought not to fetter any honest alienation of land by the devisee, and admits the danger of an arbitrary power in executors overruling all alienations by beneficiaries for an unlimited period of time. He even cites some very strong arguments against his own position, which we are led to suppose are supplied by Mr. Hayes, and to these he appends answers, the general result of his view being that a charge of debts in a will is sufficient to raise a presumption of intention that the executors are the persons to sell. He further urges the necessity, in the present state of authority, that testators should clearly point out the exact agency by which they mean the payment of their debts to be carried out. Mr. Joshua Williams, in an article of some celebrity (2 Jur., N.S., part ii., p. 68), combats these views. He points to the construction commonly placed upon *Robinson* v. *Lowater* and *Wrigley* v. *Sykes*, as showing that, after a lapse of many years, an execution under a general charge of debts may unexpectedly step in and sell lands which have been long held by the devisee; and moreover, that a purchaser from a devisee of lands charged with debts has, from the same cause, an incurable flaw in his title. The exposition of cases in this article alone entitles it to the fullest consideration. Lord St. Leonards alludes to it in the "Concise Vendors," 13th ed., p. 545 (n), by saying that "the two cases referred to have introduced considerable difficulty upon titles by implying a power of sale in cases from a charge of debts though the estate is demised to others. This is contrary to the received opinion. It would not be safe to rely on the authority of these cases." Mr. Dart also (V. and P. 3 Ed., p. 401) alludes to the point as one of the greatest difficulty and importance. "In such cases," he says, viz., where there is a charge of debts and a devise of land to A.B. in fee beneficially, A.B. not being the executor, "it has been the practice to accept titles from the devisee alone, without requiring evidence of the debts having been paid or causing the executors to concur in the conveyance. Recent decisions, however, tend to raise a very serious doubt as to whether this practice has not been erroneous, and as to whether the sale should not have been by the executors, or at any rate with their concurrence; even the efficacy of such concurrence is doubted by many practitioners upon the ground that the power of the executors to sell, if it exists, is a collateral power, and is incapable of being released." He adds that "in this state of the authorities it is impossible to lay down with confidence any rule of practice for such cases. It seems, however, to be reasonably clear that, as matters stand at present, a purchaser from the devisee in the devisee's absence cannot safely complete without either satisfying himself that all debts have been paid, or requiring the executors to authorise the proposed payment of the purchase money to the vendor." The very latest remarks on the subject will be found in a note to the same volume, p. 476. Since that was written another decision has been given by the Master of the Rolls in *Sabin* v. *Heap*, 29 L. J. N. S. 79. There a testator had commenced his will by a general direction that all his just debts, &c., should be paid and discharged; and after a lapse of twenty-seven years, although the parties beneficially entitled had been in possession, the executors exercised the power of sale, and the Master of the Rolls enforced the rule that they could make a good title, although they had refused to answer a requisition whether there were any debts of the testator unpaid. A stronger case than this can scarcely be supposed.

We now come to *Hodkinson* v. *Quinn*. A testator devised real estate at T., after his just debts, &c., should be first paid thereout, to C. and W., and the survivor of them and the heirs of such survivor upon certain trusts for the benefit of his two daughters, and after the death of the survivor of the two daughters upon trust to sell (the receipts of the trustees to be good discharges), and to pay the proceeds as therein mentioned. Testator directed his executors L. and F. to collect and get in all debts and moneys due to him, and sell all his personal estate and effects (not consisting of moneys), and apply the proceeds and all his ready money in payment of such of his debts as should not be secured by mortgage of the real estate at T. Testator died in 1838; the surviving daughter in 1859. In 1857 the plaintiffs were appointed trustees in the room of C. and W. In 1860 the plaintiffs put up the estate for sale, and the defendant became a purchaser, but objected to complete, on the ground that the concurrence of the testator's representative was necessary. This the plaintiffs were unable to obtain, as the executor of the surviving executor refused to act in any way. The defendant, on this ground, demurred to specific performance of the contract. The Vice-Chancellor said he thought the case might be disposed of on the fact of the refusal of the executors to act; but this he considered to be ground too narrow for the decision. He fully adopted *Robinson* v. *Lowater*, and even *Sabin* v. *Heap*, to the extent that in every case where there is a direction for the payment of debts, and no definite provision made by whom and when those debts are to be paid, the executors have an implied power to enter into contracts for sale. Whether or not they have a legal power, they at least have full power of insisting that the contract be performed by those who have the legal estate. Thus *Doe* v. *Hughes* and the cases in equity may be reconciled. His Honour then proceeds to deal with the question of the double power; one, the implied power in the executors to sell at any time; the other, the express power in the trustees to sell at a fixed epoch. And here, after stating what the result might have been, had the power of the executors been express instead of implied, which was not the present case, he said he could not consider the cases to go so far as to establish the proposition, that in no case can the devisee in fee sell without the concurrence of the executor. This was the point contended for by counsel on behalf of the demurrer; and it is certainly difficult, after *Robinson* v. *Lowater* and *Sabin* v. *Heap*, to see how that conclusion is to be avoided. The reasoning on this point was not full, but the Vice Chancellor has delivered his opinion on the question, and the result is, that the uncertainty in practice which formerly prevailed remains in all its force. It is plainly unsafe for the purchaser to rest content with the assurance that all the debts are paid, even if he gets such an assurance, which the executor is not bound to give, for unexpected debts may at any time start up; nor can he compel the executor to join in the sale, or to authorise the receipt of the purchase money by the devisee. The case, indeed, does not go the entire length of the opinion above expressed. It rather turns upon the fact that the executors, who had the implied power, did not exercise it until the time arrived for the devisees to exercise the express power, nor did they interfere with the devisees in so selling, they merely refused to join. After this it was held, following *Spackman* v. *Timbrell*, 8 Sim. 260, and the remarks in 5 Jarman on Mortgages 141, that the estate was effectually put out of the reach of creditors. The doctrine in *Robinson* v. *Lowater* could not apply after a sale by the devisees had actually taken place.

His Honour then proceeded to notice Mr. Joshua Williams's arguments, so far as they went upon the ground that this was a collateral power in the executors which must extend over all time, and could not be released, except by the executors joining in the sale. His Honour was not disposed to go that length, but in the present case was of opinion that when a duty had been imposed upon trustees to sell at a given epoch, the executor could not afterwards step in and sell the same property after an actual alienation by the devisees had taken place. Looking at the decision with reference to the special facts of the case, the principles it involves will be found to go no further than in many previous authorities. In so far, however, as it declares, whilst upholding *Robinson* v. *Lowater*, and the succeeding cases, that these decisions do not *always* render the concurrence of the executors necessary in a sale by devisees, it leaves the practice where it was; or rather it seems to place intending purchasers less under the guidance of a general rule, and more exposed to the effect of special circumstances than before.

COMMON LAW.

COMMON LAW PROCEDURE ACT, 1852, S. 18—ACTION AGAINST BRITISH SUBJECT OUT OF THE JURISDICTION OF THE COURTS.

Bates v. *Bates*, 9 W. R. C. P. 255.

By the 18th section of the Common Law Procedure Act, 1852, a writ of summons is provided to meet the case of the defendant, being a British subject, who is resident at the time of action brought beyond the jurisdiction of the Court, and not either in Scotland or Ireland. The form of the writ in this case is similar to that in ordinary use, except that it bears an indorsement purporting that it is for service out of the jurisdiction; and the time for appearing thereto, instead of as in other cases being *fixed*, viz., eight days—is regulated according to the distance from England of the place where the defendant is residing. The provision in question proceeds to enact (in case of *non-appearance* by the defendant), that if the writ was personally served, or reasonable efforts, to the knowledge of the defendant, made to effect such service, but the defendant wilfully neglects to appear or is living out of the jurisdiction in order to defeat and delay his creditors—then, in any of such cases, the court or judge may direct that the plaintiff may proceed in the action in such manner, and subject to such conditions, as to the court or judge shall seem fit, having regard to the time allowed for the defendant to appear being reasonable, and to the other circumstances of the case. It is, however, made a condition precedent to such order, that the court or judge shall be satisfied by affidavit not only with regard to the facts already mentioned, but also that "there is a cause of action which arose within the jurisdiction or in respect of the breach of a contract made within the jurisdiction." With respect to the ulterior proceedings of an action so commenced, and in which an order dispensing with the defendant's appearance has been obtained, the provision proceeds to require that the plaintiff, before he can obtain judgment, shall prove the amount of the debt or damages he claims either before a jury (as on a writ of inquiry) or before a master of the court according to the nature of the case, and as the court or judge may direct.

The present case arose out of the above provision, which it may be remarked, was intended as a substitution for the former unsatisfactory mode of reaching the effects of a defendant resident abroad, which might happen to be in this country through the pressure of a distringas. The order to proceed had been originally made on the terms of *filing* a declaration, and serving the defendant (who resided in California) with a notice to plead in *fifty days*; and it was now sought by the plaintiffs (on the ground that in the meantime the defendant was parting with his property to defeat his creditors), to vary this order by substituting eight days for fifty, and by allowing the notice to plead to be stuck up in the master's office, instead of being served on the defendant. And, moreover, that the plaintiff might be at liberty to sign judgment after proving his case by affidavits, or otherwise, as the master should think fit. This application was made and granted upon the authority of the case of *Firmin* v. *Perry* (see Law Dig. by Wise & Evans, 5 N. S. p. 1253.) There the defendant, having contracted a debt in England, went to reside in Australia. He was personally served with the proper form of writ, and required to appear in five months; and having made no appearance according to its exigency, the plaintiff then obtained an order to proceed in the terms granted in the present application. It should be remarked, however, that Mr. Justice Willes entertains considerable doubt whether, in such cases, a declaration can be dispensed with; and he states authoritatively the intention of the framers of the Act to have been, that in all cases where the defendant resides beyond the jurisdiction, and an order to proceed is made under this section, there should be notice of each step given to the defendant, and an opportunity given him to plead to the declaration.

CRIMINAL LAW.

AGENT—MISAPPROPRIATION OF MONEYS, WHEN NOT WITHIN 7 & 8 GEO. 4, C. 27.

Reg. v *May*, 9 W. R., C. C. R., 256.

This is an important decision; first, because the species of misappropriation to which it refers is far from uncommon, and second, because it throws considerable doubt upon the case of *R.* v. *Carr* (Russ. & Ry. 198). The prisoner was an *agent* of several companies or houses of business, or at least was paid by them a commission on all business he could procure for them; and it was his duty to receive payment for the orders he procured, and to hand over any money he might receive for them forthwith. Instead of doing so he, on two occasions on which he had received money for the company, first neglected and then (on demand) failed to hand over the amounts; for which conduct he was prosecuted and convicted at the sessions under the statute of Geo. 4. But the conviction was quashed by the Court of Appeal on the ground that under the circumstances he was not the servant of the company. "He was not," in the words of the Chief Justice of the Queen's Bench, "subject to such control as is necessarily introduced in the relationship between master and servant."

In support of the conviction the case above referred to was chiefly relied on. Then it was held that a commercial traveller is a *clerk* of the house or houses with which he is connected, and for which he takes orders and receives payment of the goods forwarded; and that he can, as such, be guilty of embezzlement. But, as remarked by the court in the present case, an ordinary commercial traveller must obey the orders of the house or houses for which he travels—which distinguishes his position from that of the person then under the consideration of the court; for he was under no control at all. Moreover, the authority of the case of *R.* v. *Carr* has itself been questioned on the ground of its correctness depending upon the possibility of a man being the *servant* of several masters at one time. See per Parke B. in *Reg.* v. *Goodbody* (6 Car. & P. 667). It may further be remarked that in *Reg.* v. *Walker* (27 L. J. M. C. 207) it was held that a man who, being a refreshment house keeper, was also employed by some manufacturers of manure to get orders for their goods and pay over to them the moneys received in payment—the person employed being himself paid by a commission—could not be guilty of embezzlement in the character of a servant. The relationship between the parties was held to be rather that of principal and agent, for the prisoner's only obligation to get orders, was the loss of the commission he would otherwise earn.

Parliament and Legislation.

HOUSE OF LORDS.

Tuesday, Feb. 5.

Her Majesty opened Parliament in person this day, and read her speech from the throne.

The address in answer to the royal speech was moved by the Earl of SEFTON and seconded by Lord LISMORE, and agreed to.

HOUSE OF COMMONS.

Tuesday, Feb. 5.

NEW MEMBERS.

The following gentlemen took the oaths and their seats for the places appended to their names:—Mr. Layard (Southwark); Mr. Moffatt (Honiton), Mr. Hardy (Dartmouth), Mr. Pigott (Reading), Lord Bury (Wick Burgha), Mr. Beaumont (Newcastle), Lord Stanhope (South Notts), Mr. Vyner (Ripon), Mr. Barttelot (West Sussex), Mr. Wyndham (Cumberland), and Mr. Phillipps (Pembrokeshire).

NEW WRITS.

On the motion of Mr. BRAND, writs were directed to be

issued for the election of new members for South Wilts, in the room of Mr. Sidney Herbert, who has been called to the Upper House as Lord Herbert; for Bolton, in the room of Mr. Joseph Crook, who has accepted the Chiltern Hundreds; and for Bradford, in the room of Mr. Titus Salt, who has also accepted the Chiltern Hundreds.

On the motion of Sir J. ELPHINSTONE, a new writ was also ordered to issue to elect a member for the county of Aberdeen, in the room of Lord Haddo, now Earl of Aberdeen in the peerage of Scotland.

THE BANKRUPTCY AND COPYRIGHT BILLS.

The ATTORNEY-GENERAL gave notice that on Monday next he should move for leave to bring in a Bill to amend the law relating to Bankruptcy and Insolvency, and that on Friday, the 15th inst., he should move for leave to bring in a Bill to amend the law relating to copyright in works of high art.

THE ADDRESS.

Sir E. COLEBROOKE moved the address in answer to her Majesty's speech, which was seconded by Mr. PAGET, and after some discussion agreed to.

Wednesday, Feb. 6.

NEW WRIT.

On the motion of Mr. BRAND, a new writ was ordered to issue for the election of a member for the county of Cork in the room of Mr. Deasy, who has accepted the office of one of the Barons of her Majesty's Court of Exchequer in Ireland.

FORGED TRADE MARKS.

Mr. ROEBUCK said the predecessor of her Majesty's present Attorney-General framed a Bill for the purpose of preventing, as far as possible, the affixing forged and dishonest English trade marks to bad foreign goods. He wished to ask the President of the Board of Trade whether he was prepared to bring in such a measure in the course of the present session.

Mr. GIBSON said the Board of Trade returns for December had been delayed in order to afford time to make up the lading accounts of all cargoes properly appertaining to the year 1860, but they would be laid on the table in the course of a week. With regard to the question of the hon. and learned member for Sheffield, a Bill had been prepared, and would shortly be introduced into the other House of Parliament.

Mr. HADFIELD asked whether any powers would be taken in the Bill to negotiate with foreign states for a reciprocal measure of protection.

Mr. GIBSON said that this Bill was for the purpose of amending the law of England as it now stood in relation to the fraudulent marking of merchandise, and it would attach penalties to the use of trade marks for the purpose of defrauding purchasers of goods. Undoubtedly the Government would be very glad if Englishmen could obtain national treatment in all countries. This country gave foreigners national treatment with reference to trade marks, and as the Bill would render our law more efficient, it might induce other powers to give national treatment to Englishmen in foreign countries.

Thursday, Feb. 7.

CONSOLIDATION OF THE STATUTE LAW OF ENGLAND AND IRELAND.

The SOLICITOR-GENERAL gave notice that on Thursday, the 14th of February, he would move for leave to bring in a Bill to consolidate and amend the Statute Law of England and Ireland relating to offences against the person; and other Bills to consolidate and amend the Criminal Statute Law of the kingdom.

HIGHWAYS.

Sir G. C. LEWIS moved for leave to bring in a Bill for the better management of highways in England. The Bill was substantially the same with that which he brought in last year and which passed the second reading.

Friday, Feb. 8.

NEW MEMBERS.

The Hon. Captain Windsor Clive took the oaths and his seat for Ludlow, in the room of Colonel Percy Herbert, resigned.

Mr. Heygate took the oaths and his seat for Leicester in the room of Dr. Noble, deceased.

MARRIAGE WITH A DECEASED WIFE'S SISTER.

Mr. M. MILNES gave notice that on this day fortnight he would move for leave to bring in a Bill to legalise marriages with a deceased wife's sister.

Correspondence.

CHANCERY "CHAMBERS."

Now that the new system and practice established by the Acts and Orders of 1852 may be said to have been fairly tested, I wish to make some remarks, and suggest what I think would be improvements.

First, I would recommend that the Master of the Rolls, and each of the Vice-Chancellors, sit two days a-week in chambers instead of in court. The advantages of this plan would be, that the chief clerks would not be compelled to act judicially. Instead of the judge coming to chambers worn out with court work, and the prospect of judgments to prepare when he gets home, he will come in the morning fresh and ready for his work. Instead of listening to a hurried explanation from a chief clerk, who gives his own view, perhaps omitting what might be urged against it, the judge would hear what all parties have to say. It must be recollected that many clerks of large agency firms, who were versed in the practice before 1852, and many solicitors who attend the judges, do not pretend to be advocates. At present they are hurried into the awful presence of a judge, and standing around him say something that may have relation to the summons more or less; they could tell their story in their own way if they had time; but does a judge at chambers ever listen to a long affidavit if read? I doubt it. I remember a story of a late master, not very remarkable for good temper, and an old managing clerk. The master interrupted the clerk before he had said two words, whereupon the veteran said, "Sir, if you will let me tell my story my own way, I can do so. I do not pretend to be as clever a pleader or advocate as you were" (that, no doubt, was a little bit of soap). Whereupon the generally irate master was calmed, and let the old fellow go on. The judges should let the solicitors sit down, and put them at their ease, so as to discuss the matter quietly in all its bearings; in fact, do what their chief clerks do. A very common objection to this seemingly obvious course (which evidently was contemplated by the Acts) is, that the chief clerks' valuable time would be taken up; but I would dispose of that as I would the objection which would be taken to the judge being obliged to delay his business in court—how will the work be done? It is unimportant, comparatively speaking, that it is done if it is not done properly. The more haste, the less speed. Suppose the hearing of suits is delayed, I do not see that it much matters. One of the judges, and generally another, can at the present time hardly get causes for hearing into his paper to make up the proper complement. I suppose counsel would not like it; but the juniors could in some cases attend the judge in chambers, and the seniors have a little more leisure for drilling or amusement. Surely a counsel with consultations from 9 to 10, in court till 4, and reading briefs till 10, would be glad of a little leisure. Possibly, on a future occasion, I may pursue this subject.

J. C.

The practice now constantly adopted in some of the chambers for the chief clerk not to say at the time of attending a summons, what is to be allowed to the solicitor for attending is very injurious to the London agent. He sends in his agency bill say twice a-year, and charges 6s. 8d. for an attendance; what benefit is it to him to find, when his country client is taxing his bill (as is now so often done), and gets a sixth taken off, making him pay costs of taxing, that 13s. 4d. is allowed, and if he charges 1 guinea, 6s. 8d. is added to the taxings off? And even if his bill is not taxed, everyone is aware of the great awkwardness of making additions to a delivered bill. I submit that what is to be allowed should be stated at the time. If the chief clerk likes to add anything afterwards, well and good. I would recommend solicitors to be very careful to get their attendance noted by the chief clerk, otherwise they will find out, perhaps a year and a half after the attendance, that they have been probably three hours before him for nothing—for not only may another solicitor object that their client ought not to attend, but if they have nothing to say, and say nothing (and perhaps even if they say something), the chief clerk will possibly allow nothing.

A CHANCERY CLERK.

HILARY TERM EXAMINATION.

Notwithstanding Mr. President Pollock's wishing the candidates "a good deliverance" with their examination, I observe that he and his brother examiners found it necessary to "postpone" (in more vulgar language *pluck*), no less than 28 candidates out of the 105 who were examined last term, or more than a quarter of the entire number—in fact, approaching very near to the greatest plucking examination yet known of, viz., Easter Term, 1850, when the proportion of the rejected to the successful candidates was one in every three and a half.

On looking through the questions they do not appear to me to be at all unusually difficult or abstruse ones, as is evidenced by the examiners commending no less than sixteen out of the seventy-seven candidates who passed; so that for the sake of the credit of the "knowledge" of the profession, I will charitably hope that the Christmas gaieties of the past month must have interfered with the unsuccessful candidates' brains, and that by next term it will have worn off, and that they will then amply redeem their present position by appearing in the then list of meritorious (passed) candidates.

Seriously speaking, however, the result of this examination does not speak creditably for the proficiency of the rising generation of articled clerks, who, it is to be hoped, will not again let such a black list be recorded against them; and though I am not desirous that they should work themselves to death as poor W. D. Lewis literally did (whose obituary so opportunely occurs in the same number of the Solicitors' Journal as the result of this Hilary Term's examination), yet I am desirous that they should remember that unless they sow they cannot expect to reap, and that they will be as surely "known" in after life as is the tree by its fruits.

Bristol, Feb. 4. Lex.

COSTS OUT OF THE ESTATE.

The recent case of *Wing* v. *Angrave* (30 L. J., Chy., 65), decided in the House of Lords, is an instance of the loss which may be sustained, in the shape of costs, by a person being named as "a beneficiary" in testamentary documents.

The facts of the case are shortly these. Mr. and Mrs. Underwood, and three infant children, on the 13th of October, 1853, embarked on board the *Dalhousie*, for Australia. The vessel was wrecked, and the passengers and all the crew, except one seaman, perished. Mr. Underwood by his will, dated 4th of October, 1853, bequeathed all his real and personal estate to Mr. Wing, upon trust for his (testator's) wife, and in case she died in his lifetime, then upon trust for his three children, and in case they died under age and unmarried, then to Mr. Wing absolutely, and he appointed his wife and Mr. Wing executors. Mrs. Underwood by her will, dated the same day (made in exercise of a power), bequeathed her real and personal estate to her husband, and in case he died in her lifetime, then to Mr. Wing absolutely, and she appointed her husband and Mr. Wing executors. Mr. Wing proved both wills. There was no evidence whether Mr. or Mrs. Underwood survived the other. It was, no doubt, considered to be immaterial which of them was the survivor, as if Mr. Underwood survived his wife, then her property as well as his own would pass by his will to Mr. Wing absolutely (the trust for the children having failed by their death under twenty-one and unmarried), and if Mrs. Underwood survived her husband, then his property, as well as her own, would pass by her will to Mr. Wing. The law lords held (*dissentiente* Lord Campbell, L.C.), that in the absence of evidence as to the survivorship, Mr. Wing was not entitled; and they dismissed his appeal without costs, and refused an application that the costs should be paid out of the estate. C.

COPYHOLDS—PRACTICE.

H. is a tenant on the rolls as trustee for A. A. wishes to have the copyholds surrendered to him, but H. not being able to attend the court, gives a power of attorney to D. to act for him. C. being the solicitor to the lord, *and also to H. & D.*, claims the right to prepare the power for execution by his client; but A.'s solicitor contends that it is his duty to prepare it, although his client is not made a party to it in any way. Can any of your readers say what is the usual practice in such cases? A Subscriber.

APPOINTMENT OF NEW TRUSTEES OF CHAPELS.

Your correspondent "A. G. P.," in your number for January 26, does not state upon what points he seeks a judicial decision. I am not aware of any such decision; but having several times availed myself of the 13 & 14 Vict., c. 38, I have come to the following conclusions:—

1. That the mode of appointing new trustees provided by the Act applies chiefly to cases where there is no power of appointing new trustees in the trust deed, or where the power has lapsed. In such cases the Act is of great service, and saves the heavy expense of resorting to the Court of Chancery.

2. That the Act *may* also be used where there is an existing power in the deed, but that, in such cases, a short conveyance in the usual way is the *better* mode of procedure. In either case no enrolment is required, and the stamp and expense would be about the same. The power of appointing new trustees is usually vested in the survivors when reduced to a certain number, but sometimes it is vested in the members of the church, or their consent or concurrence is necessary. In the latter case it must, of course, be seen that the church meeting has been properly convened, and the consent or concurrence properly effected; and evidence of these facts should be preserved to accompany the title deeds. R. L.

The Provinces.

Birmingham.—At the half-yearly meeting of the Birmingham Chamber of Commerce, held on the 1st inst., it was announced that, in conjunction with the Chambers of Commerce of Sheffield and other towns, some progress had been made in the preparation of a measure having in view the registration of trade marks, it being in contemplation to introduce a Bill with that object into Parliament in the ensuing session. Upon this question Mr. A. Ryland remarked that the subject had been brought under the notice of the Board of Trade last year by some of the principal Chambers of Commerce in the kingdom, who considered it desirable that some plan for the registration of trade marks should be provided, so that in case of any legal proceedings being instituted, the proof of property in trade marks might be accomplished at a less cost than at present.

Darlington.—Mr. Francis Mewburn, solicitor of this town, has retired from the profession. Mr. Mewburn was solicitor to the first railway company in the kingdom. He became solicitor to the Stockton & Darlington Railway Company in 1817, and continued to hold that office until the period of his retirement at the beginning of the present year.

Wednesbury.—At the Wednesbury Police Court, on the 22nd ult., W. Partridge, Esq., stipendiary magistrate, delivered his decision in the following case:—A short time ago the clerk to the Local Board of Health applied that the whole of any fines inflicted upon informations laid by the said board should be paid over to the funds of the board, and not, as theretofore, one half to the Stipendiary Justices' Fund, and the other half to the board. Mr. Partridge then said he would consider the case, as it was one of great importance. He now gave judgment. He said: "In this case, which came before me a few weeks ago, in which the Wednesbury Local Board of Health were the complainants, and in which I adjudged a certain defendant to pay a penalty of £5, for an offence punishable under the provisions of the Public Health Act (1848), the clerk to the above board subsequently applied to me to direct that the penalty so imposed should be paid to the treasurer of the said Local Board instead of to 'The Fee Fund' of the justices for the northern division of the Hundred of Seisdon; and in support of such application cited sec. 24 of the 9 & 10 Vict., c. 65 (the Stipendiary Justices' Act). and also the 11 & 12 Vict., c. 63 (the Public Health Act), s. 133; which last-mentioned Act, after providing that no proceedings for the recovery of any penalty incurred under the provisions of this Act shall be taken by any person other than by a party aggrieved, or the Local Board of Health in whose district the offence is committed, without the consent in writing of her Majesty's Attorney-General, proceeds to enact as follows:—'And if the application of the penalty be not otherwise provided for, one half thereof shall go to the informer, and the remainder to the Local Board of Health of the district in which the offence was committed, provided always that if the said Local Board be the informer, they shall be entitled to the whole of the penalty recovered, and all the penalties or sums recovered on account of any penalty by them shall be paid over to the treasurer, and shall by him be placed to the district fund mentioned in this Act.' Now s. 24 of the 9 & 10 Vict., c. 65, provides as follows:—'And be it enacted, that all

other fines, penalties, and forfeitures, except such as are hereinbefore referred to, and which shall be imposed by such stipendiary justices, either alone or together, with any other justice or justices of the peace for the said county, which are or shall be by any Act made payable to her Majesty or to any person whomsoever, save and except the informer who shall sue for the same, or any party aggrieved, shall be recovered and adjudged to be paid to the treasurer of the public stock of the county of Stafford, and shall be applied in aid or reduction of the general county rate.' Now I am clearly of opinion, first, that the application of the penalty in question is 'otherwise provided for' by the 9 & 10 Vict., c. 65, s. 24; and secondly, that in the section already referred to a broad distinction is drawn between 'a party aggrieved' and the Local Board of Health; and having come to this conclusion, I hold that the Local Board of Wednesbury is not a party aggrieved within the spirit and meaning of the Act, and, consequently, I cannot entertain the application."

Ireland.

THE NEW JUDGE.

Mr. Deasy has been appointed to the vacant seat in the Irish Court of Exchequer. By this appointment a vacancy will occur in the representation of the county of Cork.

THE LEGAL APPOINTMENTS.

It is stated that the official and formal notification has been given to the Solicitor-General (Mr. O'Hagan) and to Mr. Serjeant Lawson, that the former has been appointed Attorney-General and the latter Solicitor-General. The other vacancies have not as yet been filled up, but the names of Messrs. Rollestone, Q.C., Armstrong, Q.C., and Andrews, Q.C., are spoken of for the serjeantcy; and Serjeant Sullivan, Messrs. Hemphill, Q.C., and Barry, Q.C., for the office of law adviser to the castle.

THE IRISH BENCH.

It has been stated that eight out of twelve of the Irish common law judges are Roman Catholics, (including two of the three chiefs)—viz., Chief Justice Monahan (the Chief Baron), Judges O'Brien, Fitzgerald, Ball, and Keogh, and Barons Hughes and Deasy. The new Attorney-General being also a Roman Catholic, it is not improbable that, ere long, the proportion will be increased to three-fourths instead of two-thirds.

MARITIME LAW.—SALVAGE.

On the 28th of May, 1860, a Prussian barque was caught in a fearful hurricane off the coast of Norfolk, and about 70 miles from the port of Great Yarmouth. The captain and four of the crew were washed overboard, and drowned. At 7 a. m. on the 29th of May, the vessel, which was then lying on her broadside with some of the crew still clinging to the wreck, was discovered by Captain Hubbard, the master of the smack "Gihon," of Yarmouth. At the most imminent peril to the lives of himself and crew, Captain Hubbard was enabled to save the lives of the survivors on the wreck. The sufferings of the men he had saved induced Captain Hubbard immediately afterwards to set sail for Yarmouth without attempting to take the barque in tow. The barque and cargo were of considerable value and were shortly afterwards picked up by other vessels and towed to Great Grimsby. Soon after the barque had been taken to that port a claim was made on behalf of the owner master and crew of the "Gihon," for life salvage, under the Merchant Shipping Act. 1854. The parties interested in the Prussian barque declined to pay the life salvage, and proceedings were instituted for its recovery. The cause recently came on for hearing before the Court of Admiralty, when the Court decided against the claim on the ground that the 458th section of the Merchant Shipping Act, which provides for the recovery of life salvage, only extends to cases in which lives are saved within three miles from the shore of the United Kingdom. The case which we have mentioned shews that this section requires amendment.

Foreign Tribunals and Jurisprudence.

FRANCE.—A singular case was recently submitted to the President of the Civil Tribunal of Paris, sitting in chambers. Some time back a literary man named Ludovic was arrested and lodged in prison for the non-payment of a debt of 1,400f. to a restaurateur. He had been cited as a witness before the Correctional Tribunal of Bordeaux in a case which was to be heard on the 31st of January last. By the administrative regulations the only way by which a prisoner can be conveyed from one place to another is by the gendarmerie, from brigade to brigade; but Ludovic represented that it was repugnant to him to be handed over to the gendarmerie as if he were a criminal. He therefore prayed that he might be sent to Bordeaux in custody of a garde-du-commerce, and he offered to pay the travelling expenses both of himself and the man. He also offered as full security to his creditor to deposit 2,000f. in the hands of the garde-du-commerce, subject to the condition of the sum being restored on his being reinstalled in prison. But the President held that, as the law and regulations make no difference between a prisoner for debt and a criminal as to the manner in which they are to be conveyed from one place to another, the application could not be granted.

Reviews.

A Treatise on the Statutory Jurisdiction of the Court of Chancery, with an Appendix of Precedents. By WILLIAM WHITTAKER BARRY, of Lincoln's-inn, Barrister-at-Law. London: V. & R. Stevens & Sons. 1861.

The state of transition in which the jurisdiction and practice of courts of equity have been placed for some years past is strikingly exhibited in the attempts which have been made by text writers to adapt their books to the alterations during the period in question. One of the most remarkable features in the modern works on chancery practice is their departure generally from the old plan of a treatise; in which, under the former state of things, such writers as Newland, Daniel, and Sidney Smith, exemplified the forms and procedure under which the Court exercised its jurisdiction. For some time after the modern statutes had effected a great revolution in its business, it was discovered that the form of a treatise, or of any systematic and complete work, was unsuitable for the embodiment of what was still very indefinite and unsettled. There was no doubt that much would be modified, if not entirely swept away, by enactments resulting from the experience gained in the working of the first few of the statutes to which we refer, and which were for a while regarded as somewhat tentative and empirical. Thus there sprung up a system of separate editions of each important Act affecting practice, and of grouping, merely according to the requirements of convenience, some Acts which had no other connection. We have also had books which although not affecting to give any complete account of the practice of the Court, included a considerable number or the whole of its General Orders, and of as many recent statutes of importance as practitioners might desire for their ordinary work. The author of the treatise now before us has pursued a middle course, between the manner of the old essayists or treatise writers and of the modern compilers and annotators. On the one hand, he avoids (except in the title of his book, which is hardly correct), every appearance of an attempt at an exhaustive treatment of the subject; and on the other, so far as he has gone, he has adopted the method of a treatise, and presents the information which he has to give, not in the form of mere notes referring to the statutory enactments, but rather in substantive propositions, embodying the effect of the statutes, and of decided cases. There can be no doubt that this form is very much the best for the purpose of those who want to make themselves generally acquainted with the procedure of the court. Mere notes tacked on to the statutes themselves, are certainly very convenient for use in court, or for reference *pro hâc vice*; but it is impossible for a student to sit down and read such a work with any comfort; and, therefore, a book like the present was really a desideratum. At all events, nowhere else can be found so clear and intelligible an account in a substantive form of the Trustee Acts of 1850 and 1852, the Lands Clauses Consolidation Act, Sir George Turner's Act, the Trustee Relief Acts, the Infants Settlement and Leases and Sales of Settled Estates Acts, and other statutes under which the Court exercises its special

jurisdiction. The construction of these various Acts, and their practical application, is pretty well settled by more than 1,000 reported cases, of which the *Weekly Reporter* (established in 1852, the year of the Chancery Amendment Acts and Orders) has been the largest contributor. What was wanting to systematize these numerous enactments and decisions, was a book which would not group them both in an arbitrary manner, but which would arrange and co-ordinate them, according to their logical sequence. Mr. Barry has successfully attempted this task, and has produced an excellent book on chancery practice for students. One difficulty necessarily attended the exact execution of our author's design. The General Orders of the Court are so interwoven with the statutes conferring jurisdiction upon it, as to make a separate treatment of each extremely difficult. Mr. Barry, therefore, is obliged not unfrequently to refer to the Orders, and sometimes he does so where he was not compelled to do so; while he makes no reference whatever to them in other parts where any author would have introduced them, unless he was bound to exclude them by the design of his work. This is one inconvenience resulting from the restriction imposed by the title of this book. It is hard to define the class of subjects, or points of procedure, which are considered proper to be dealt with by the Legislature only, as distinguished from those which belong to the province of General Orders. In this respect there has been heretofore in truth no nice discrimination, and therefore there is something rather too arbitrary in a scientific treatise confining itself to what is thus, in a great measure, purely accidental. Unquestionably, some of the statutes included in this treatise have descended into comparatively trivial details, such as are usually prescribed by General Orders, while, on the other hand, many of the latter contain rules equally important and arbitrary as those enacted by Parliament. It is unnecessary to cite any illustrations of what we have just observed. So far the title of the work, if taken as indicating its proper scope and design, may fairly be considered as too narrow and restrictive; but also, as we have already intimated, it is open to the further charge of being too comprehensive, when viewed in the light of the author's performance. A book professing to treat of the statutory jurisdiction of the Court of Chancery which omits altogether the Acts of 1852, and the whole of the Winding-up Acts, is either wrongly entitled or very incomplete. The design of Mr. Barry was not to write a treatise upon the statutable jurisdiction of the Court, but upon certain important statutes by which the summary jurisdiction of the Court is greatly extended; and this he has done with care and ability; but yet we should not have felt ourselves justified in abstaining from offering the foregoing remarks upon the misleading title of the book before us.

Mr. Barry has added an appendix of precedents, which appear to have been judiciously selected. We doubt, however, the utility as a genoral rule of incumbering treatises with precedents. To persons accustomed to the practice of the Court, the precedents contained in this volume cannot be supposed to be of much use. Others, no doubt, may find them very convenient as guides; but Mr. Tripp's Chancery Forms appear to us to be all that such persons require; and we think, moreover, that practical forms and precedents ought to be material for a separate work, rather than of an appendix to every book on the subject to which they may appear to be relevant. The forms contained in Mr. Barry's appendix are well adapted to modern practice, and relate to a great number of different proceedings, and we would have no objection whatever to offer to them if they had not been made a part of his treatise.

The work contains a very complete table of contents and list of cases, and a very good general index.

Lectures Elementary and Familiar on the English Law. By JAMES FRANCILLON, Esq., County Court Judge. Second Series. London: Butterworths. 1861.

Last year we had an opportunity of expressing our entirely favourable opinion of the first series of Mr. Francillon's lectures. The volume then published contained 39 short lectures of a very elementary character, upon a large number of scattered heads of law. The volume now before us purports to be intended as the complement of our English system of jurisprudence. The object of the writer is to impart to a young student some general knowledge of the entire domain of our law, as a preparation for its more severe and elaborate study at some future time. The design of the work not merely encourages but in fact necessitates the most discursive treatment of the topics upon which it touches. It makes any thing like systematic plan or subjective sequence impossible; and it is hard, in such a book, to prevent subjects which require handling at length from assuming undue proportions when viewed in relation to the entire work. The student therefore must not expect to discover in these lectures any chart or map of the law of England, giving him a cursory view of its entire area and its main landmarks and subdivisions. But he will find in them a great deal of useful and reliable information, which, moreover, is imparted in a very agreeable manner. Although they do not go near exhausting the topics of English law, yet they neatly touch upon and illustrate very many of them sufficiently at all events to prompt the reader to further investigation for himself. Mr. Francillon is a pleasant writer and his notion of elementary law lectures is a happy one. He has got the knack of saying a little about a large subject without misleading his reader by a too absolute statement of propositions—which is one of the commonest faults of text writers who aim at generalization and simplicity. There is a temptation to state doctrines without indicating their endless modifications. From this Mr. Francillon has well escaped, and so far is a safe guide for beginners; to whom we recommend the perusal of his lectures as being not only instructive but entertaining.

The Law Magazine and Law Review for February, 1861. Butterworths.

The Law Magazine for this quarter contains a great variety of interesting matter. It opens with an article upon the trial of Lord Cochrane, in which it attributes the conviction of the renowned Sea-King very much to unintentional unfairness on the part of Lord Ellenborough. We have next a paper on common law pleading of the present day, founded principally upon the recent edition of Mr. Serjt. Stephen's treatise. There are also articles on the prospects of the Admiralty Court, the Bench and Bar of France, Mr. Hare's scheme for the reform of our Parliamentary representation, and other interesting subjects; together with several reviews of new law books, or new editions of old ones; nor must we forget to make special mention of a very interesting contribution towards the biography of the late Mr. Jarman. In the usual chapter on the events of the quarter, there is a vehement, and, in our opinion, a very disrespectful, attack upon the Lord Chancellor, for his recent observations on the practice of judges delivering oral judgments. The writer, who is very severe about what he terms the "bad taste" of the Chancellor, himself exhibits the worst possible taste in the expressions which he has made use of towards one who is not only in the distinguished position of being the head of the legal profession, but who is also unquestionably a great lawyer and most able judge. We have felt compelled by the respect which we owe both to the Lord Chancellor and Vice-Chancellor Wood, to abstain from any observations upon so delicate a subject as that of taste in reference to the question at issue; and the comments contained in the *Law Magazine* fully convince us of the propriety of the course which we adopted.

At the last moment before going to press we have received a printed paper containing a reply to certain strictures in this number of the *Law Magazine*, on Mr. Maclachlan's Treatise on the Law of Shipping. In observance of a rule well understood amongst journalists, we did not feel ourselves to be at liberty to criticise any of the reviews contained in the magazine. We are bound, however, to say that, upon further acquaintance with Mr. Maclachlan's work, we still entertain the high opinion of it, which we expressed in our review some months ago. Nothing stated by the reviewer in the *Law Magazine* induces us to reduce our estimate of the merits of the treatise in question; on the contrary, we think the writer in the *Law Magazine* has made only such a charge of plagiarism against Mr. Maclachlan as might be made against the writer of any large law book that ever was written, and such as there were no particular grounds for making against Mr. Maclachlan.

BIRMINGHAM LAW STUDENTS' SOCIETY.

The annual meeting of the Birmingham Law Students' Society was held on Friday evening, the 1st inst., at the Midland Institute. The Mayor (Arthur Ryland, Esq.) presided, and among the gentlemen present were Messrs. H. W. Tyndall, C. T. Saunders, G. J. Johnson, T. Horton, J. Marigold, C. E. Mathews, H. Neville, Swinden, Balden, J. Chirm, and others (solicitors), honorary members; Mr. Lilly Smith (honorary secretary), and a large number of ordinary members. The chief objects of the Society are the reading and discussing legal works, debating moot points, and accumulating a library;

and its importance, especially to articled clerks, may be estimated from the report of the committee, read by the honorary secretary, from which it appears, that although the Society has been in existence but little more than twelve years, it possesses a library of upwards of 400 volumes of valuable treatises and digests for the use of the ordinary members as well as for the honorary members, the latter of whom are barristers and solicitors of the town. The total number of members both honorary and ordinary is 175, and notwithstanding the number of members fluctuates from time to time by the draughting to London of those ripe for examination, the average number at least is sustained by the admission of new members. Among the ordinary members who passed their examination last year, the report notices the name of Mr. W. Septimus Harding, who obtained honorary distinction—a feature, as the committee observed, not new to their reports, which for several years past have had to record distinctions awarded to one or more of its members.

After the adoption of the report, and other usual proceedings, the CHAIRMAN delivered the following address:—

The fact that you are members of this society, devoted to the study of the principles and practice of the law, renders it unnecessary for me to say one word as to the importance either of the acquisition of such knowledge, or of the habit of study as distinguished from mere reading. Your society, I am happy to find, truly deserves its name of the *Law Students'* Society. I greatly admire your plan of taking the questions of the examiners, reading them one by one aloud, answering them *viva voce*, and criticising the answers. In addition to this excellent practice, you discuss moot points. Your library of 400 well-selected volumes acquired in twelve years, is a testimony to the earnestness and wisdom of your predecessors and yourselves. I congratulate you on your possessing these means of knowledge, these incentives to study; and I congratulate our branch of the profession on the augury here afforded for its future reputation: and it is well for the town, too, for the welfare of every community is sensibly affected by the character of its practising solicitors. The few observations which I now address to you shall be directed to other matters than those which form the objects of your society, but which cannot be out of place to law students from one who has had thirty years' experience in the profession into which you are about to enter. I think it is as possible to spoil a Society as it is to spoil a child by praise and petting. I know it is by some considered the correct thing for a president at an annual meeting to devote his address to the glorification of the society. I could find much in your history and present state to justify such a course now, but I have too much regard for you to do so. A yearly repetition of such praises might lead some of your body to imagine that to be a studious and industrious member would insure his being a good lawyer—to look upon office work as drudgery unnecessary to be borne—and to hoid cheap certain other qualities because they are not needed peculiarly in the professional man; against this silly blunder I desire to warn you. Be you sure that good and desirable, nay, essential, as is the possession of the knowledge to the acquisition of which you devote yourselves in this Society, such knowledge alone will not make you good lawyers. Much more is needed, and I will tell you what more I think is needed; and my observations and experience have taught me this, that successful lawyers have owed more to the qualities I am about to name than to their knowledge of law, essential although that is. And these qualities are—a habit of steady, persevering application to business; method in everything—in the smallest as the greatest thing—in action and in argument; ability to fix attention on details. This ability and these habits will best be gained by patient and faithful attention to office duties during clerkship. Many other reasons might be adduced why it is good we should bear this yoke in our youth. I warn you, for your own sakes, not to shirk what is called drudgery in the office. I would mention next, as one of the essentials of a good lawyer, the ability to express your thoughts in writing readily, accurately, clearly, and with brevity. The possession of this quality cannot be too earnestly desired. It can be acquired best by study and practice in youth. A knowledge of accounts and commercial mode of procedure is most valuable in our profession, but does not often receive the attention it deserves at the hands of clerks. I now come to qualities of a higher order; they are, a deep sense of responsibility, forgetfulness of our own immediate pecuniary interest, a calm temperament, courage, and an inviolable love of truth. It may be said, all this is very trite, why tell us what is so obvious? I will tell you why I do so; because I have seen so many failures from a disregard of some of these obviously good qualities. I have seen solicitors of first-rate ability and of great acquirements in legal lore, fail because they loved themselves better than their clients—because their love of gold was greater than their love of truth, than their sense of responsibility, or because their irascible temper was not under due control, or their want of courage occasioned a loss of opportunities. Let me put a case: A client desires to make his will. If you have a proper sense of your responsibility you will ascertain the condition of his family and connections in reference to their dependence upon him, and if his proposed disposition of his property is not in accordance with what you deem to be just, you will advise him accordingly; if he insist on doing what is wrong, you will, if you have courage and forgetfulness of your own immediate pecuniary benefit, you will refuse to make his will. I have referred to a will because I have found less vigilance in making a will by young attorneys than the importance of the occasion requires; but in numberless other cases the qualities to which I have referred should often lead a solicitor to interfere between the intentions and the acts of his clients. Better to lose a client than your own self-respect. How much of our business consists of negociations; and what tells then? Is not the successful man he who has the calmest temper, the clearest method, and who is known never to depart from the truth, and never to be influenced by a love of personal gain? These qualities will prevent you being the servant of your client. He should be guided by you, not you by him. I have seen much done and bitterly repented of because the attorneys were either afraid of losing their clients or had the bad habit of regarding themselves simply as their servants. The checking of wrong by preventing the angry passions of offended clients finding vengeance in litigation, by averting unrighteous wills, by refusing to recognise an untrue statement, even if the end proposed to be gained thereby appear to be good—this we may daily do; this we ought never to omit to do; and if we cultivate the qualities I have referred to we shall do. These qualities require cultivation. A man naturally indecisive may, by constant self-watchfulness and self-discipline, become decisive; the irascible and excitable self-controlled and patient; and the careless methodical. The hardest thing to do is to check the love of money, yet this is one of the most important; but this may be done in early life. One word, and I will conclude. Let me warn you against a habit which besets a young lawyer, and if yielded to will interfere with his success quite as much as a want of book-knowledge—a juggling dexterity, cunning, or smartness. It has been well observed in a book I recommend to your study, "Essays Written during Intervals of Business," "That the proper use of dexterity is to prevent you being circumvented by the cunning of others. It should not be aggressive." A cunning lawyer is disliked by everyone, except by those dishonest people who wish to use him. When you have lived as long as I have, you will find that one rule, which you learned as children, will guide you in determining your advice to your clients. Do not think what will please them, what will secure them as clients, what will put most money into your pockets; but advise them to do that which, if in their position and with your knowledge, you would yourself do—in other words, follow our Saviour's golden rule, "Do unto others as you would have others do unto you."

An enthusiastic vote of thanks was awarded to the chairman for his great kindness in the chair, and for his excellent and valuable address.

Law Students' Journal.

LAW LECTURES AT THE INCORPORATED LAW SOCIETY.

Mr. GEORGE WIRGMAN HEMMING, on Equity, Monday, February 11.

Mr. FREDERICK MEADOWS WHITE, on Common Law and Mercantile Law, Friday, February 15.

University Intelligence.

CAMBRIDGE.

The Professor of Modern History will commence his lectures in the law schools on Monday, February 11, at twelve o'clock, and will continue them on every Monday and Friday till further notice.

Court Papers.

Queen's Bench.

NEW TRIAL PAPER.—HILARY TERM, 1861.

Surrey. Havill *v.* Amber.

Common Pleas.

NEW CASES.—HILARY TERM, 1861.

NEW TRIAL PAPER.

Middlesex. Cox *v.* Matthews.
" Lloyd *v.* Piper.

Spring Circuits of the Judges, 1861.

BRAMWELL, B., will remain in town.

Midland.

Sir A. E. COCKBURN, Bart., and CROMPTON, J.

Oakham, Wednesday, February 27; Northampton, Thursday, 28; Leicester and borough, Monday, March 4; Nottingham and town, Thursday, 7; Lincoln and city, Tuesday, 12; Derby, Saturday, 18; Warwick, Thursday, 21.

Home.

Sir W. ERLE and WIGHTMAN, J.

Hertford, Thursday, February 28; Chelmsford, Tuesday, March 5; Maidstone, Monday, 11; Lewes, Monday, 18; Kingston, Saturday, 23.

Norfolk.

Sir F. POLLOCK and WILLIAMS, J.

Aylesbury, Monday, March 4; Bedford, Friday, 8; Huntingdon, Tuesday, 12; Cambridge, Thursday, 14; Bury St. Edmunds, Tuesday, 19; Norwich and city, Saturday, 23.

Western.

MARTIN, B., and WILLES, J.

Winchester, Thursday, February 28; Dorchester, Wednesday, March 6; Exeter and city, Saturday, 9; Bodmin, Friday, 15; Taunton, Tuesday, 19; Devizes, Monday, 25; Bristol, Thursday, 28.

North Wales.

CHANNELL, B.

Welchpool, Wednesday, March 13; Bala, Saturday, 16; Carnarvon, Tuesday, 19; Beaumaris, Friday, 22; Ruthin, Monday, 25; Mold, Thursday, 28; Chester and city, Saturday, 30.

South Wales.

BYLES, J.

Haverfordwest and town, Saturday, February 23; Cardigan, Thursday, 28; Carmarthen, Monday, March 4; Swansea, Friday, 8; Brecon, Thursday, 21; Presteign, Wednesday, 27; Chester and city, Saturday, 30.

Northern.

HILL, J., and KEATING, J.

Lancaster, Saturday, February 16; Appleby, Wednesday, 20; Carlisle, Friday, 22; Newcastle and town, Wednesday, 27; Durham, Saturday, March 2; York and City, Thursday, 7; Liverpool, Thursday, 21.

Oxford.

BLACKBURN, J., and WILDE, B.

Reading, Thursday, February 28; Oxford, Monday, March 4; Worcester and City, Thnrsday, 7; Stafford, Monday, 11; Shrewsbury, Wednesday, 20; Hereford, Monday, 25; Monmouth, Thursday, 28; Gloncester and City, Tuesday, April 2.

Births, Marriages, and Deaths.

BIRTHS.

BLAKE—On Jan. 28, at Croydon, the wife of Alfred G. Blake, Esq., Solicitor, of a daughter.

COUCHMAN—On Jan 23, at Henley-in-Arden, the wife of T. B. Couchman, Esq., Solicitor, of a son.

GARRETT—On Jan. 27, at Dunesk, Malone, Belfast, the wife of Thomas Garrett, Esq., Solicitor, of a daughter.

GAWLER—On Nov. 9, 1860, at Adelaide, South Australia, the wife of Henry Gawler, Esq., Barrister-at-Law, of a son.

HAYNES—On Jan. 31, the wife of Freeman Oliver Haynes, Esq., of Lincoln's-inn, Barrister-at-Law, of a daughter.

HITCHCOCK—On Jan. 29, at Dublin, the wife of Henry Hitchcock, Esq., Solicitor, of a daughter.

KEKEWICH—On Feb. 6, the wife of Arthur Kekewich, Esq., Barrister-at-Law, of a daughter.

MOSSOP—On Feb. 3, the wife of Charles Mossop, Esq., Solicitor, 60, Moorgate-street, of a daughter.

PATTEN—On Feb. 2, the wife of James Coverdale Patten, Esq., Barrister-at-Law, prematurely, of a daughter.

MARRIAGES.

BAKER—CORNWELL—On Feb. 5, Henry Baker, Esq., Solicitor, of Bishop Stortford, to Emma Adelaide, daughter of John Carter Cornwell, Esq., of same place.

BERRIDGE—WOODWARD—On Jan. 31, Isaac Berridge, Jun., Esq., Solicitor, Bicester, Oxon, to Jane, daughter of the late George Woodward, Esq., Surgeon, of the same place.

BROOKS—TABOR—On Feb. 2, Henry Brooks, Esq., Barrister-at-Law, son of Robert Brooks, Esq., M P., of Woodcote-park, Surrey, to Fanny Clifton, daughter of the late Charles William Tabor, Esq., of Russell-square.

MOURILYAN—On Jan. 26, Mary, the wife of Joseph N. Mourilyan, Esq., Solicitor, Sandwich, Kent.

SHEPPARD—Lately, at Wells, R. Sheppard, Esq., Solicitor, aged 61.

TEMPLE—CHITTY—On Feb. 2, T. R. S. Temple, Esq., of Lincoln's-inn, Barrister-at-Law, to Henrietta, daughter of the late Joseph Chitty, Esq. Jun., of the Middle Tempie.

DEATHS.

CAZENOVE—On Jan. 27, at New Brighton, aged 77, Mr. Cazenove, one of the Official Assignees of the Liverpool Bankruptcy Court.

LYDDON—On Jan. 30, at Folkestone, Richard Lyddon, Esq., Solicitor, aged 62.

PRETTY—On Oct. 29, 1860, at Maryborough, Australia, from the effects of a railway accident in England, Henry Granger Pretty, Esq., Solicitor.

TUDOR—On Feb. 4, in his sixth year, William James, son of O. D. Tudor, Esq., Barrister-at-Law.

English Funds and Railway Stock

(Last Official Quotation during the week ending Friday evening.)

	ENGLISH FUNDS.			RAILWAYS—*Continued.*	
	Bank Stock	233	Shrs.		
	3 per Cent. Red. Ann..	91⅞	Stock	Ditto A. Stock	105
	3 per Cent. Cons. Ann.	91⅞	Stock	Ditto B. Stock	134
	New 3 per Cent. Ann..	91⅞	Stock	Great Western	65¼
	New 2½ per Cent. Ann.	..	Stock	Lancash. & Yorkshire	115
	Consols for account ..	92½	Stock	London and Blackwall.	64
	India Debentures, 1858.	95½	25	Lon. Chatham & Dover	50
	Ditto 1859.	95	Stock	London and N.-Wstrn..	100¾
	India Stock	218½	Stock	London & S.-Westrn.	94
	India 5 per Cent. 1859..	99½	Stock	Man. Sheff. & Lincoln..	51⅛
	India Bonds (£1000) ..	..	Stock	Midland	131⅛
	Do. (under £1000).....	..	Stock	Ditto Birm. & Derby	106
	Exch. Bills (£1000)...	par.	Stock	Norfolk.....	84
	Ditto (£500).....	dis. 3	Stock	North British	66
	Ditto (Small) ..	dis. 1	Stock	North-Eastn. (Brwck.)	104
			Stock	Ditto Leeds	61
	RAILWAY STOCK.		Stock	Ditto York	92
			Stock	North London.....	103
Shrs.			Stock	Oxford, Worcester, & Wolverhampton ..	..
Stock	Birk. Lan. & Ch. Junc.	82			
Stock	Bristol and Exeter....	101	Stock	Shropshire Union	50
Stock	Cornwall	6½	Stock	South Devon	40
Stock	East Anglian	16½	Stock	South-Eastern	85½
Stock	Eastern Counties	50½	Stock	South Wales	82
Stock	Eastern Union A. Stock	39	Stock	S. Yorkshire & R. Dun	100
Stock	Ditto B. Stock....	28	25	Stockton & Darlington	43
Stock	Great Northern	111½	Stock	Vale of Neath	68

Unclaimed Stock in the Bank of England.

The Amount of Stock heretofore standing in the following Names will be transferred to the Parties claiming the same, unless other Claimants appear within Three Months:—

COWARD, Rev. WALTER SCOTT, of Spanish-town, Jamaica, and ANNE EMILY COWARD, his wife, £1,343 6s. Consols.—Claimed by WALTER SCOTT VIDAL COWARD, administrator of Rev. Walter Scott Coward, who was the survivor.

CREAK, MARGARET, Spinster, St. Andrew's, Norwich, £13,000 Consols.—Claimed by ANN GILBERT, Widow, the Administratrix with the will annexed of the said Margaret Creak.

OASTLER, JONAH, Gent., of Bermondsey, and WILLIAM MORTIMORE, Gent., St. Mary-axe, £1,068 12s. 7d. Consols.—Claimed by the said JONAH OASTLER.

OWEN, ELIZABETH, Spinster, Gastigny-place, St. Luke's, £14 8s. Consolidated Long Annuities.—Claimed by ANN OWEN, Widow, and JOHN WHITING, the administrators of the said Elizabeth Owen.

PINDAR, The Right Hon. JOHN REGINALD, Earl Beauchamp, Madresfield Worcestershire, trustee to the Rev. Reginald Pindar, £196 19s. 6d. Consols.—Claimed by the Hon. CHARLES GRANTHAM SCOTT, SUSAN,

KITCHING, wife of Joseph Kitching, and the Rev. THOMAS PHILPOTT, the Executors of the said Earl Beauchamp.

YOUNG, MARY, Widow, Wareham, Dorset, £1,050 New Four per Cents.—Paid to WILLIAM YOUNG, the surviving executor, who has claimed the same.

Heirs at Law and Next of Kin.

Advertised for in the London Gazettes *and elsewhere.*

DALTON, WILLIAM, formerly Master of the Blue Coat School, Oxmantown, Dublin. Next of kin to apply to Messrs. Fletcher and Meade, Fosterplace, Dublin.

READER, SUSANNAH, late of 15, Alma-terrace, Lilford-road, Camberwell, in the county of Surrey, Spinster, who died there on or about the 3rd day of November, 1860. Next of kin to apply to the Solicitor to the Treasury, Whitehall.

WILLIAMS, JOHN HENRY, late of Ipswich, in the county of Suffolk, who died there on or about the 11th day of March, 1850. Next of kin to apply to the Solicitor to the Treasury, Whitehall.

London Gazettes.

Professional Partnerships Dissolved.

TUESDAY, Feb. 5, 1861.

CLARKE, EDWARD, & HENRY EARLE, Attorneys & Solicitors, 29, Bedford-row, Holborn, Middlesex, by mutual consent. Feb. 2.

JACKSON, HENRY, & WILLIAM THOMAS TRAVIS, Attorneys & Solicitors, Westbromwich, Staffordshire (Jackson & Travis), by mutual consent. Jan. 1.

PULLEY, WILLIAM, & D. CLARKE, Attorneys & Solicitors, High Wycombe, Buckinghamshire (Pulley & Clarke), by mutual consent. Jan. 31.

FRIDAY, Feb. 8, 1861.

HARDISTY, EDWARD BRYDGES, & ARTHUR GOODRICH, Attorneys-at-Law & Solicitors, 43, Great Marlborough-street, Middlesex (Hardisty & Goodrich); by mutual consent. Dec. 31.

Windings-up of Joint Stock Companies.

TUESDAY, Feb. 5, 1861.

BRITISH PROVIDENT LIFE AND FIRE ASSURANCE SOCIETY (REGISTERED).—Petition to wind up, presented January 31, will be heard before V.C. Kindersley, on February 15. Warry, Robins, & Burges, Solicitors, 70, Lincoln's-inn-fields.

LIMITED IN BANKRUPTCY.

UNION DISCOUNT COMPANY (LIMITED).—A petition to wind up, presented 25th January, will be heard before Mr. Commissioner Evans, Basinghall-street, on Feb. 12, at 1.

Creditors under 22 & 23 Vict. cap. 35.

Last Day of Claim.

TUESDAY, Feb. 5, 1861.

ADEY, STEPHEN, Esq., 11, Harewood-square, Middlesex. Leman & Co., Solicitors, 51, Lincoln's-inn-fields. Feb. 28.

BARKER, JOSHUA, Gent., Thorne's-lane, Wakefield, Yorkshire. Whitham, Solicitor, Wakefield. July 1.

CHAMPION, JOHN, Captain, Mine Agent, Newlyn, Cornwall. Chilcott, Solicitor, Truro. March 30.

GREGORY, GEORGE, Esq., Harlaxton Manor House, Harlaxton, Lincolnshire. J. B. Andrews, Esq., Cannon-gate, Hythe, Kent, and W. Taylor, Esq., Hadley Hurst, near Barnet, Hertfordshire, Executors. March 30.

HITCHCOCK, MARTHA, Widow, formerly of Exeter, late of Clifton, Bristol. Domville, Lawrence, & Graham, Solicitors, 6, New-square, Lincoln's-inn. April 6,

LOUD, GEORGE HENRY, Gent., Herne Bay, Kent. Furley & Callaway, Solicitors, Canterbury. March 5.

MOYLE, ELIZABETH, Widow, Penzance, Cornwall. Edmonds, Solicitor, Penzance. May 1.

NICHOL, WILLIAM, Wine Merchant, 9, Ranee moody-gully, Calcutta, East Indies. Cowdell & Boyce, Solicitors, 21, Abchurch-lane, London. June 30.

POPE, GEORGE, Gent., Kingston Deverill, Wilts. T. Pope, Gent., Horningsham, Wilts, and W. Neale, Gent., Yeovil, Somersetshire, Executors. March 1.

POTTER, JOHN, Farmer, Hunsingore, Yorkshire. S. A. Potter, Widow, Hunsingore, T. G. Hartley, Painter, York, and W. Atkinson, Farmer, Kirk Deighton, Executors. April 1.

PRYOR, CATHERINE, Widow, 28, Regency-square, Brighton. Warry, Robins, & Burges, 70, Lincoln's-inn-fields, Middlesex. March 1.

QUINSTED, ELIZABETH, Widow, Sandgate, Kent. J. V. Bean, Farmer, Executor, Dibgate, near Hythe, Kent. May 1.

STEPHENSON, JAMES, Gent., Gainsborough, Lincolnshire. Heaton & Oldman, Solicitors, Gainsborough. March 25.

SYDDALL, ANN RHODES, Spinster, Tunbridge Wells, Kent. Sprott, Solicitor, Mayfield, Sussex. May 1.

FRIDAY, Feb. 8, 1861.

BOULTEN, JAMES, Licensed Victualler, King George Tavern, Philadelphia-street, St. Paul, Bristol. Nash, Solicitor, 6, John-street, Bristol. March 4.

BRUCE, JAMES, Esq., 19, Pentonville-road, Middlesex. Hoppe & Boyle, Solicitors, 3, Sun-court, Cornhill. March 25.

BURGESS, STEPHEN, Farmer, Grazier, & Salesman, Westbrook, Lydd, Kent. Stringer & Son, Solicitors, New Romney, Kent. March 1.

CLARK, THOMAS, Accountant, 4, York-road, Montpelier, Bristol. J. & H. Livett, Albion-chambers, Small-street, Bristol. April 15.

GREEN, PHILIP JAMES, Esq., Notting-hill, Kensington, Middlesex, and of Great St. Helens, London. Barnes & Bernard, Solicitors, 2, Great Winchester-street, London. March 18.

GREGORY, GEORGE, Esq., Harlaxton Manor-house, Harlaxton, Lincolnshire. White, Borrett & White, Solicitors, 6, Whitehall-place, Westminster. March 30.

GUNDRY, WILLIAM, Shoe Maker to her Majesty, 1, Soho-square, Middlesex. Parker, Rooke, & Parkers, Solicitors, 17, Bedford-row. April 6.

HOWSHIP, ELIZABETH, Melcombe Regis, and Preston, Dorsetshire. Howard, Solicitor, 35, St. Thomas-street, Melcombe Regis. March 18.

JUNKISSON, JAMES, Gent., formerly of 126, Grange-road, Bermondsey, Surrey, but late of William-street, Neate-street, Old Kent-road. John & Walter Butler, Solicitors, 191, Tooley-street, London-bridge. April 6.

LABREY, THOMAS, Tea Dealer, Manchester. Cooper & Sons, Solicitors, 44, Pall Mall, Manchester. April 8.

LATTER, LAWRENCE, Farmer, Earl's Farm, Wadhurst, Sussex. Bun, Solicitor, Mayfield, Sussex. March 25.

LEWIS, WILLIAM, Tanner, formerly of St. Mary-le-strand-place, Old Kent-road, but late of Portland-terrace, New Kent-road, and of Upper Russell-street, Bermondsey, Surrey. John and Walter Butler, Solicitors, 191, Tooley-street, London-bridge. April 6.

MARSHALL, WILLIAM, Tailor, 134, Regent-street, Saint James, Westminster, Middlesex. Routh, Rowden, & Stacey, 14, Southampton-street, Bloomsbury, Solicitors, Middlesex. Dec. 30.

MEDHURST, JOHN VINCENT, Surgeon, Hurstbourne Tarrant, Southampton. Earle & Smith, Solicitors, Andover. April 16.

NEWMAN, JOHN, Optician and Philosophical Instrument Maker, 26, High-street, Camden Town, Saint Pancras, Middlesex, and 122, Regent-street, Saint James, Westminster. Rye, Solicitor, 16, Golden-square, Westminster. April 8.

WALLIS, HENRY, Market Gardener, Five fields, Ealing, Middlesex. Sharp, Solicitor, 2, Middle Temple-lane, London. April 27.

WEBB, JOHN, Yeoman, Fetcham, Surrey. Druce & Sons, Solicitors, 10 Billiter-square, London. April 1.

Creditors under Estates in Chancery.

Last Day of Proof.

TUESDAY, Feb. 5, 1861.

AYERS, CHARLES, late of Nelson, New Zealand. Ayers *v.* Ayers, V. C. Kindersley. Nov. 5.

BATLEY, WILLIAM, Shopkeeper, Great Yarmouth. Jackson *v.* Batley, V. C. Stuart. March 5.

CHUNE, JOSEPH, sen., Timber Merchant, Coalbrookdale, Salop. Lloyd *v.* Chune, V. C. Stuart. March 11.

EYRE, GEORGE, Grocer, Handsworth Woodhouse, Yorkshire. Eyre *v.* Gray, M. R. March 2.

GREGORY, FREDERICK WILLIAM SMITH, Brick Manufacturer, Fordington, Dorsetshire. Lock *v.* Gregory, V. C. Kindersley. March 5.

HARTWELL, LUCY, Tobacconist, Chichester. Richardson *v.* Le Feaux, M. R. Feb. 22.

INGOLDBY, CHRISTOPHER, sen., Louth. Abbott *v.* Ingoldby, V. C. Stuart March 4.

KRAEUTLER, WILLIAM, Merchant, Cornwall-terrace, Regent's-park, Middlesex, and of Angel-court, Throgmorton-street, London. Kraeutler *v.* Micville, V. C. Stuart. Feb. 21.

MASON, WILLIAM, Innkeeper, Smith, & Wheelwright, Colchester, Essex. Gall *v.* Dearn; Gall *v.* Dearn, V. C. Wood. Feb. 28.

PETTINGALL, EDWARD, Major-General in her Majesty's Indian Army Oriental Club, Hanover-square, Middlesex. Inman *v.* Rawes, V. C. Stuart. March 1.

FRIDAY, Feb. 8, 1861.

BLAKE, SIR FRANCIS, Baronet, Tilmouth-park and Twisel-castle, Northumberland. Skele *v.* Blake, M. R. March 2.

CAVE, WILLIAM, 26, Rathbone-place, Oxford-street, Middlesex. Cave *v.* Cave, V. C. Wood. Feb. 28.

ELCE, JOHN, Machine Maker, Alderley-edge, Chester. Elce *v.* Elce, M. R. March 7.

GRESHAM, WILLIAM RUSHTON, Pawnbroker and Salesman, formerly of Nottingham, and late of Shefford, Bedfordshire. Nodes *v.* Wing, V. C. Wood. Feb. 28.

HALES, THOMAS, Gent., 23, Stanhope-street, Bath. Hales *v.* Cox, M. R. March 4.

MANCHEE, JOHN, Gent., Cliff-terrace, Margate, Kent. Manchee *v.* Kay, V. C. Stuart. March 11.

MILLS, WILLIAM VANDERLURE, Gent., Lower Green, Speldhurst, Kent. Mills *v.* Alleyne, V. C. Stuart. March 16.

TODD, JOHN, Farmer, Forncett, St. Peter, Norfolk. Todd *v.* Simpson, M. R. March 4.

Wallis, Christopher, Surgeon, Litcham, Norfolk. Beck *v.* Batterham, V.C. Wood. March 2.

Assignments for Benefit of Creditors.

Tuesday, Feb. 5, 1861.

Ambown, John, Miller, North-street, Kellingby, Sussex. *Sol.* Sinnoch, Hailsham. Jan. 23.

Bailey, James, Joiner, Liverpool. *Sols.* Avison & Radcliffe, 18, Cook-street, Liverpool. Jan. 31.

Cock, William, Victualler, St. Breock, Cornwall. *Sols.* Symons & Son, Wadebridge. Feb 1.

Davies, William, Shopkeeper, Blaenavon, Monmouthshire. *Sol.* Blakey, Newport. Jan. 7.

Frank, James, Tailor & Outfitter, Stockton, Durham. *Sol.* Thompson, Stockton. Jan. 25.

Fennell, John Barnes, Grocer & Cheesemonger, Hastings. *Sol.* Heathfield, 19, Lincoln's-inn-fields. Jan. 21.

Jones, Henry, Draper, Grocer, & General Shopkeeper, Bulkeley-square, Llangefni, Anglesea. *Sol.* Owen, Llangefni. Jan. 28.

Parker, Thomas, Draper, Strangeways and Deansgate, Manchester. *Sols.* Sale, Worthington, Shipman, & Seddon, Manchester. Jan. 23.

Pearce, Jonathan, Glass Cutter & Paper Hanger, 9, Westbourne-grove, Bayswater, Middlesex. *Sols.* Wild & Barber, 10½, Ironmonger-lane, Cheapside. Jan. 9.

Rastell, George Joseph, & Paddon, George, Jewellers & Watchmakers, Boston, Lincolnshire. *Sol.* York, Boston. Jan. 26.

Roberts, William, Linen Draper, Swansea, Glamorganshire. *Sols.* Surr & Gribble, 12, Abchurch-lane. Jan. 25.

Walton, William, Farmer, Somerton, Somersetshire. *Sols.* Welch & Eglin, Somerton. Jan. 26.

Wood, George, jun., Farmer, Farnborough Hall, Farnborough, Kent. *Sols.* Essel, Knight, & Arnold, The Precinct, Rochester. Feb. 1.

Friday, Feb. 8, 1861.

Abbott, John, Blackburn, and George Abbott, Blackburn. Jan. 18. *Sols.* Sale, Worthington, Shipman, & Sedden, Manchester.

Bull, Daniel Gingell, Cheesemonger, 63, Aldersgate-street, London. Feb. 4. *Sol.* Taylor, Fenchurch-street, London.

Cozet, Charles, Farmer, Rayleigh, Essex. Jan. 31. *Sol.* Woodard, Billericay, Essex.

Crosby, William, Boot-maker, Chester. Feb. 2. *Sol.* Ford, 2, Grosvenor-street, Chester.

Dodson, Tom Henry, Draper, Hexham, Northumberland. Dec. 22. *Sol.* Stokoe, Hexham.

Dunn, Charles, Cordwainer, Canterbury. Feb. 5. *Sol.* Wilkinson, 16, Best-lane, Canterbury.

Feast, Robert, Export Oilman, 13, Bishopgate-street Without, London. Jan. 24. *Sols.* Philp & Son, 26, Bucklersbury, London.

Lawrance, Edwin, China and Glass Dealer, High-street, Clapham, Surrey. Jan. 17. *Sol.* Greig, 2, Verulam-buildings, Gray's-inn, Middlesex.

Robinson, Henry William, Hardwareman, 25, Crosby-row, Walworth, Surrey. Jan. 8. *Sol.* Bell, 102, Leadenhall-street.

Roscoe, Robert, Mercer and Engine Driver, Castle-street, Shrewsbury. Dec. 31. *Sols.* Norton & Davies, 4 and 5, Talbot-chambers, Shrewsbury.

Smith, William John, Builder, Chigwell, Essex. Jan. 29. *Sols.* Gepp & Veley, Chelmsford.

Thatcher, John, Baker, Lambourn, Berkshire. Jan. 28. *Sol.* Rowland, Hungerford.

Bankrupts.

Tuesday, Feb. 5, 1861.

Alcock, John, Printers' Joiner, 15, Fuller-street, St. Matthew Bethnal Green, Middlesex. *Com.* Evans: Feb. 14, at 11; and March 19, at 12; Basinghall-street. *Off. Ass.* Bell. *Sols.* May & Son, Solicitors, 2, Princes-street, Spitalfields. *Pet.* Jan. 24.

Barton, George, Draper & Haberdasher, Cromford, and also of Bonsall, Derbyshire. *Com.* Sanders: Feb. 19, and March 14, at 11.30; Nottingham. *Off. Ass.* Harris. *Sol.* Richardson, Manchester. *Pet.* Feb. 2.

Bickley, John, Grocer, Confectioner and Provision Dealer, Burton-upon-Trent, Staffordshire. *Com.* Sanders: Feb. 22, and March 15, at 11; Birmingham. *Off. Ass.* Kinnear. *Sols.* Potter & Crump, Walsall. *Pet.* Feb. 1.

Brooksbank, John, Brush Board Cutter, 33, King-street, Clerkenwell, Middlesex. *Com.* Evans: Feb. 14, at 11.30; and March 19, at 11; Basinghall-street. *Off. Ass.* Bell. *Sol.* Cart, 7, South-square, Gray's-inn. *Pet.* Feb. 1.

Buxton, William, Butcher, Liverpool. *Com.* Perry: Feb. 15, at 12; and March 8, at 11; Liverpool. *Off. Ass.* Turner. *Sol.* Jones, 44, Castle-street, Liverpool. *Pet.* Feb. 1.

Cairns, Charles, Bonded Store & Provision Merchant, Newport, Monmouthshire. *Com.* Hill: Feb. 19, and March 19, at 11; Bristol. *Off. Ass.* Acraman. *Sol.* Blakey, Newport, Monmouthshire. *Pet.* Jan. 30.

David, Morgan William, Draper and Grocer, Aberaman, Glamorganshire. *Com.* Hill: Feb. 19, and March 19, at 11; Bristol. *Off. Ass.* Miller. *Sol.* Henderson, Bristol. *Pet.* Jan. 17.

Hagenbuch, John Melchior, Trimming Dealer and Agent, 8, Addle-street, Aldermanbury, London. *Com.* Fane: Feb. 15, and March 15, at 1.30; Basinghall-street. *Off. Ass.* Whitmore. *Sol.* Billing, 33, King-street, Cheapside. *Pet.* Feb. 4.

Hayes, Mark, jun., Tea & General Dealer, Staines-road, Hounslow, Middlesex. *Com.* Evans: Feb. 15, at 12.30; and March 19, at 1; Basinghall-street. *Off. Ass.* Johnson. *Sol.* Kent, 11, Cannon-street, West, London. *Pet.* Feb. 4.

Kirk, William, Wholesale Milliner, Birmingham. *Com.* Sanders: Feb. 20, and March. 25, at 11; Birmingham. *Off. Ass.* Whitmore. *Sol.* Smith, Birmingham. *Pet.* Jan. 25.

Le Mare, Joshua, & William Close Currie, Merchants & Commission Agents, 9, Broad-street-buildings, London (J. Le Mare & Co.) *Com.* Goulburn: Feb. 18, at 2; and March 20, at 11; Basinghall-street. *Off. Ass.* Pennell. *Sols.* Reed, 3, Gresham-street, London; or Sale, Worthington, Shipman, & Seddon, Manchester. *Pet.* Dec. 29.

M'Millan, Alexander, & William Blackburn, Woollen Warehouseman, Star-court, Bread-street, Cheapside, London. *Com.* Evans: Feb. 14, at 11; and March 14, at 12; Basinghall-street. *Off. Ass.* Johnson. *Sols.* Blakeley & Stone, 26, Nicholas-lane; or Settle, Leeds. *Pet.* Jan, 23.

Parkes, Edwin, Currier & Leather Seller, Gloucester. *Com.* Hill: Feb. 19, and March 19, at 11; Bristol. *Off. Ass.* Acraman. *Sol.* Wilkes, Gloucester. *Pet.* Feb. 1.

Penn, Benjamin, & John Attwell, Use Iron Manufacturers, Tipton, Staffordshire. *Com.* Sanders; Feb. 21, and March 14, at 11; Birmingham. *Off. Ass.* Whitmore. *Sols.* Caddick, Westbromwich; or James & Knight, Birmingham. *Pet.* Jan. 24.

Skinner, Ambrose, Coach Builder & Harness Maker, Camberwell-green, Lambeth, and Denmark-hill, also of Dulwich, Surrey. *Com.* Goulburn: Feb. 18, at 11; and March 18, at 1; Basinghall-street. *Off. Ass.* Pennell. *Sol.* May, 67, Russell-square, London. *Pet* Jan. 30.

Whitaker, William, Merchant, Bradford, Yorkshire. *Com.* West: Feb. 14, and March 15, at 11; Leeds. *Off. Ass.* Young. *Sols.* Taylor & Jeffrey, Bradford; or Blackburn & Son, Leeds. *Pet.* Jan. 22.

Friday, Feb. 8, 1861.

Ashworth, Handel, Machine Broker & Cotton Manufacturer, Dukinfield, Cheshire. *Com.* Jemmett: Feb. 20 & March 13, at 12: Manchester. *Off. Ass.* Fraser. *Sols.* Darnton & Greaves, Ashton-under-Lyne, or Sale, Worthington, Shipman, & Seddon, Manchester. *Pet.* Feb. 6.

Barratt, Thomas, Timber Merchant & Builder, Market Drayton, Salop. *Com.* Sanders: Feb. 22 & March 15, at 11; Manchester. *Off. Ass.* Kinnear. *Sols.* Hodgson & Allen, Birmingham, or Warren, Market Drayton. *Pet.* Feb. 7.

Bent, John, jun., Grocer, Provision Dealer, Auctioneer, & Valuer, Dudley, Worcestershire. *Com.* Sanders: Feb. 21 & March 14, at 11; Birmingham. *Off. Ass.* Kinnear. *Sols.* James & Knight, Birmingham, or Wood, Dudley. *Pet.* Feb. 2.

Booth, Edwin, Maltster, Prior's Lee, near Shiffnal, Salop. *Com.* Sanders: Feb. 21 & March 14, at 11; Birmingham. *Off. Ass.* Whitmore. *Sols.* H. & J. E. Underhill, or Langman, Wolverhampton, or Hodgson & Allen, Birmingham. *Pet.* Feb. 7.

Calvert, Jonathan Fielding, Draper, Blackburn, Lancashire. *Com.* Jemmett: Feb. 20 & March 13, at 12; Manchester. *Off. Ass.* Fraser. *Sols.* Sale, Worthington, Shipman, & Seddon, Manchester. *Pet.* Jan. 29.

Curtis, Edwin, Dealer in American Goods, 164, Strand, Middlesex (E. Curtis & Co.) *Com.* Goulburn: Feb. 18, at 1, & March 25, at 12.30; Basinghall-street. *Off. Ass.* Pennell. *Sols.* Allen, Nicol, & Allen, 38, Queen-street, Cheapside, London. *Pet.* Jan. 29.

Davis, William Popham, Slate & Marble Merchant, Dealer in Bricks, Cement, & Pottery, Cardiff, Glamorganshire. *Com.* Hill: Feb. 19 & March 19, at 11; Bristol. *Off. Ass.* Miller. *Sol.* O'Donoghue, Shannon-street, Bristol. *Pet.* Feb. 6.

Denton, John, William Denton, & John Denton, jun., Builders & Brickmakers, Dartmouth-park, Forest-hill, Kent (John Denton & Sons), *Com.* Fane: Feb. 21 & March 22, at 11; Basinghall-street. *Off. Ass.* Cannan. *Sols.* Plews & Boyer, 14, Old Jewry-chambers, Old Jewry. *Pet.* Feb. 5.

Demoor, Francis Constantin John, Beerseller, Canteen, Northampton. *Com.* Fonblanque: Feb. 19, and March 20, at 1.30; Basinghall-street. *Off. Ass.* Stansfield. *Sols.* Harrison & Lewis, 6, Old Jewry, London; and Shield, Northampton. *Pet.* Jan. 29,

Dunn, William, Grocer & Beerseller, Burslem, Stafford. *Com.* Sanders: Feb. 22, and March 15, at 11; Birmingham. *Off. Ass.* Whitmore. *Sol.* Litchfield, Newcastle-under-Lyne; or James & Knight, Birmingham. *Pet.* Feb. 4.

Goldschmidt, Edward, & Hermann Boas, Wholesale Stationers, Nottingham (Edward Goldschmidt & Co.) *Com.* Sanders: Feb. 21, and March 14, at 11.30; Nottingham. *Off. Ass.* Harris. *Sol.* S. R. P. Shilton, Nottingham. *Pet.* Feb. 5.

Hunt, Jacob, Cotton Manufacturer, Stockport. *Com.* Jemmett: Feb. 27; and March 20, at 12; Manchester. *Off. Ass.* Hernaman. *Sols.* Earle, Son, Hoppe, & Orford, Princess-street, Manchester. *Pet.* 4.

Riley, John, Iron Founder & Machine Maker, Blackburn. *Com.* Jemmett: Feb. 19, and March 19, at 12; Manchester. *Off. Ass.* Pott. *Sol.* Pankhurst, Manchester. *Pet.* Feb. 5.

Shipley, John George, Saddler & Harness Maker, and also being Joint Proprietor of the Sporting Life and Eclipse Newspapers, and Sole Proprietor of the Court Circular Newspaper, 179 & 181, Regent-street, Middlesex. *Com.* Fonblanque: Feb. 19, and March 20, at 1; Basinghall-street. *Off. Ass.* Graham. *Sols.* Reece, Wilkins, & Blyth, 10, St. Swithin's-lane, London. *Pet.* Feb. 6.

Smith, Robert, Builder and Timber Merchant, 8, Harmood-place, Hampstead-road, Middlesex. *Com.* Goulburn: Feb 20, and March 25, at 12; Basinghall-street. *Off. Ass.* Pennell. *Sols.* Wild & Barber, 10½, Ironmonger-lane, London. *Pet.* Feb. 5.

MEETINGS FOR PROOF OF DEBTS.

Tuesday, Feb. 5, 1861.

Bartle, John, Lace Manufacturer, Lenton, Nottinghamshire. Feb. 28,

at 11; Nottingham.—Bassett, David, Corn Merchant, Uxbridge, Middlesex. Feb. 27, at 1; Basinghall-street.—Bevan, Richard, Wine Merchant, Liverpool, March 19, at 11; Liverpool.—Blackham, George, Grocer & Provision Dealer, Birmingham, Warwickshire (Blackham, Brothers). March 1, at 11; Birmingham.—Cox, Joseph Ebenezer, Dealer in Stone Ware, Pipes, & Cement, 1 & 2, High-street, Lambeth, Surrey. March 1, at 11; Basinghall-street.—Fox, John, Scrivener & Money Broker, Ashbourne, Derbyshire. Feb. 28, at 11; Nottingham.—Hewison, Michael, Hosier & Outfitter, Nottingham. Feb. 28, at 11; Nottingham.—Jervis, George, Thomas Lees, & William Henry Bradbury, China Manufacturers, Longton, Staffordshire. Feb. 28, at 11; Birmingham.—Palmer, Walter, Clothier & Seedsman, Pencoyd, Herefordshire. Feb. 16, at 11; Birmingham.—Rowe, William Henry, Builder & Contractor, 7, Gloucester-place, Gloucester-crescent, Regent's-park, Middlesex. Feb. 27, at 11.30; Basinghall-street.—Worman, Adolph, Boot & Shoe Manufacturer, 126, Minories, London, and 16, Alfred-street, Bow-road, Middlesex. March 1, at 11; Basinghall-street.

Friday, Feb. 8, 1861.

Buhrer, Abraham, Importer of Foreign Glass, and Merchant, 46, Skinner-street, Snow-hill, London. March 1, at 12.30; Basinghall-street.—Cox, William, Pickle and Fish Sauce Manufacturer, 54, Lamb's Conduit-street, Middlesex. Feb. 20, at 1; Basinghall-street.—Daunt, Edward Russell, & John Wilson, Bill Brokers, 37, Old Broad-street, London (Daunt, Wilson, & Co.) March 1, at 11.30; Basinghall-st.—Jackson, Thomas, Contractor, 10, Cannon-street, London. March 5, at 12; Basinghall-street.—Lord, John, Sidney Aquila Butterworth, & Horatio Butterworth, Dyers, Shelf, near Halifax (Lord & Co.) March 1, at 11; Leeds.—Palmer, Richard, Plumber & Glazier, 20, St. James's-street, Brighton, Sussex. March 2, at 11; Basinghall-street.—Parsons, James Charles, Publican, Liverpool Arms Hotel, Beaumaris, Anglesea. March 4, at 11; Liverpool.—Phillips, William, Currier, Leather Cutter & Publican, Norwich. March 5, at 12; Basinghall-street.—Poole, Lewis Robert, and Samuel Bryan, Boot & Shoe Manufacturers, 504, New Oxford-street, Middlesex, and Northampton. Feb. 19, at 11.30; Basinghall-street.—Wentworth, Arthur, and Thomas Wentworth, Hide and Skin Salesmen & Dealers in Hides and Skins, Skin Market, Bermondsey, Surrey (A. & T. Wentworth). March 5, at 12; Basinghall-street.—Whitelock, Peter, Grocer, Leeds. March 1, at 11; Leeds.—Willats, James, Upholsterer, Cabinet Maker, & House Agent, 11, Finsbury-pavement, London. March 1, at 12.30; Basinghall-street.—Wolstenholme, William, Ironmonger, 97, Brook-street, Old Garrett, Manchester. March 6, at 12; Manchester.—Woodhall, Abner, Felt Manufacturer, Barns Cray, Kent. March 5, at 1; Basinghall-street.

LAW STUDENTS' DEBATING SOCIETY,
AT THE LAW INSTITUTION, CHANCERY LANE.

QUESTIONS FOR DISCUSSION.

For Tuesday, February 12th, 1861. President—Mr. Green.

XCIII.—Should the Federal Government of the United States prevent, by armed intervention, the secession of South Carolina?

Mr. H. J. Smith is appointed to open the debate, and Messieurs M. B. Baker, Oliver, and Atwood to speak on the question.

For Tuesday, February 19th, 1861. President—Mr. Wingate.

265.—Ought the decision of the Vice-Chancellor Kindersley in Day *v.* Day, 8 W. R. 288, to be reversed on appeal?

Affirmative—Mr. Woolf and Mr. Hodson.
Negative—Mr. G. Hill and Mr. Collins.

For Tuesday, February 26th, 1861. President—Mr. Winckworth.

266.—Prior to a sale by auction of chattels, the owner gives to an intending purchaser a secret warranty. Is such warranty valid? Hopkins *v.* Tanqueray, 23 L. J., C. P. 162.

Affirmative—Mr. Coe and Mr. Yeo.
Negative—Mr. Woollacott and Mr. Beal.

Members are urgently requested to provide the Committee with questions.

Members requiring books are requested to apply for them five minutes before seven o'clock on the evenings of debate.

Copies of the Rules and all requisite information will be furnished by the Secretary, with whom gentlemen desirous of becoming members are requested to communicate.

GEO. L. WINGATE, Secretary,
9, Copthall-court, E.C.

We cannot notice any communication unless accompanied by the name and address of the writer

***Any error or delay occurring in the transmission of this Journal should be immediately communicated to the Publisher*

THE SOLICITORS' JOURNAL.

LONDON, FEBRUARY 16, 1861.

CURRENT TOPICS.

It was explained at the time when the present arrangements respecting Statute Law reform were made, that the primary object in view was the preparation of an edition of the statutes, containing only Acts in force, and omitting those of a local or personal nature. The Statute Law Revision Bill, re-introduced by the Lord Chancellor on Monday evening, purports to be auxiliary to the work of editing. It proposes to repeal, expressly and specifically, a very large number of enactments which have ceased to be in force, either by being repealed in general terms, or virtually repealed, or superseded; and it appears from the preamble that this course is adopted with a view to the revision of the statute law, and particularly to the preparation of a revised or expurgated edition. The usefulness of such a work is unquestionable, and it is one which could not be accomplished except under the authority of the Government, and by the means which are at the disposal of it alone. One great advantage of such a repealing Bill is, that when the work of examination is once done, its results are authoritatively recorded, by the direct action of the Legislature, for all time to come. Future expurgators will not have to search and investigate for themselves; they will be saved the labour of going again over the ground which has been once swept clear.

The present Bill, which is the work of Messrs. Reilly and Wood, relates to a period of nearly a century, extending backwards from the present time. We have reason to believe that another Bill on the like plan is in preparation, and will shortly be introduced, dealing with the early statutes, and extending over several reigns; and that some portion of the first volume of the revised edition is, in fact, in type, and will receive its final shape on the expurgating Bill being adopted by Parliament.

The New Bankruptcy Bill is an improvement on the Government Bill of last session in all respects save one. It is not a consolidating measure, and is, so far, inferior. But the experience of last session showed the difficulty of passing a consolidating and amending Bill through the House. Therefore, perhaps, the Attorney-General has done wisely in making it simply a measure of amendment. The expense which it is proposed to entail on the country is very much less now than it was last year; and the burden on creditors also is diminished by a reduction of fees. The new Bill avoids the error of restricting the jurisdiction of the County Courts, and in respect to the winding-up of the estate, the creditors are left free to follow their own devices, whether to retain the official assignee, or to employ one or more of the creditors as assignee, or to appoint a committee of creditors, with a manager as their agent, after the exact pattern of the Scotch system. It may, perhaps, be doubted whether it is wise to vest all the functions of the creditors in the hands of a *majority of value* of that body. But even if it be wise to do so with regard to the choice of assignees, it is certainly inexpedient and somewhat unreasonable to do so with regard to the transfer to a county court; for the very object of a transfer to a county court is to accommodate the body of creditors as to locality, and not to give to a few creditors, or it may be to one large creditor, the power of inconveniencing all the rest. In this case the decision should be by a majority in number *and* value.

The trust deed clauses of the new Bill are satisfactory. Those relating to the administration of the estates of deceased debtors are meagre; but probably as much as can be passed. The clauses making the courts in Scotland, Ireland, and the colonies, auxiliary, are, we believe, new and would be most beneficial.

We observe in the schedule to the new Chancery Order that an Examiner of the Court who is taken into the country for the purpose of the examination or cross-examination of any witness, is to be allowed for every mile which the examiner travels from London to the place of examination and back the sum of one shilling and sixpence. This is the same allowance as that fixed by the order of 8th May, 1845. In that Order the fact that the allowance was exorbitant was comparatively harmless, inasmuch as country examinations were very rare. Under the new general Order it is not improbable that they will become frequent, unless they are prevented by considerations of expense; but according to the present scale the mere travelling expenses of an examiner going to and returning from Liverpool would amount to not less than the sum of £31 1s.

We noticed some weeks ago that an attempt was being made to throw open the prosecutions of offenders committed by the Leeds Borough Magistrates to the profession generally, instead of allowing them to be conducted exclusively by two gentlemen appointed fifteen or sixteen years ago by the Town Council as public prosecutors. The subject was referred to a committee of the council which, on the 13th inst., reported as follows:—"That this committee approve of the principle of the employment of public prosecutors, and are of opinion that the ends of public justice would be best served by the appointment of such officers, but recommend to the Council that the present appointments be rescinded from and after such time as the Council may deem expedient, and that the future appointments to these offices be not permanent, but rotatory, and continue in force for twelve months only; the parties appointed being required to conduct such prosecutions for the county allowance. That the justices be recommended in all special or important cases, where it is considered expedient for the ends of public justice so to do, to bind over the party aggrieved to prosecute at either the sessions or assizes, as the case may be."

It was thereupon moved that the report be adopted, and that the committee be authorised to carry it out, and report to the council; and a resolution to that effect was, after some discussion, carried unanimously. The gentleman who moved the adoption of the report explained that the system which its framers contemplated was that the public prosecutors should conduct all cases, excepting those which might seem so important to the magistrates as to induce them to bind over the party aggrieved to prosecute, instead of binding over a policeman, and that such exceptional cases should be conducted by the prosecutor's own attorney. Instead, moreover, of the office of public prosecutor being a permanent one, it would only be held for a year by each occupant, who would be selected by lot from those attorneys practising within the borough, who were able and willing to take it. If the town council and the magistrates insist on interfering with the conduct of prosecutions which they appear to have no right to do, the arrangement suggested by the committee appears to be as little open to objection as any that could be made. The main ground alleged for assuming the right is, that if the party aggrieved were left free in every case to choose his own attorney, there might be touting for prosecutions on the part of some attorneys who do not stand high in the profession. So far as Leeds is concerned, however, we believe that this apprehension is unfounded, and

even if it were not we object, on principle, to the doing of evil that good may come. The Town Council of a borough has no more right to appoint a public prosecutor than has the parish vestry or the board of guardians, nor have the magistrates any right to say to the real prosecutor, "You shall not prosecute, but we will bind over one of the police to do so." If the present system of prosecuting offenders requires amendment, let the Legislature interfere, but in the meantime corporations and magistrates ought not to exceed their powers on the mere ground of expediency.

TAXATION OF SUITORS.—No. V.—LAW TAXES.—LEGAL FINANCE.—COURTS OF JUSTICE AS BANKERS.

Having mapped out the subject of the Taxation of Suitors we proceed to that of Legal Finance.

All the courts of justice have more or less to act as bankers or stakeholders for suitors. In contentious suits money is often paid into court on pleas of tender and the like, or by way of bail or security. In administration business such payments amount to very large sums; witness the fifty and odd millions under the care of the Court of Chancery. The common law courts are now vested with extensive equitable jurisdiction, the right use of which will be learned in a generation or two, and will involve the conduct of very large banking transactions under their orders. In the first article of our present series we indicated the questions which were involved in considering courts of justice as bankers; but before proceeding to discuss those questions it will be well to inquire somewhat into the statistics of the subject, and to point out what are the existing modes of providing for the safe custody of the monies and funds of the suitors in the several courts of the kingdom. For the present we shall confine ourselves to the Courts of Chancery, Common Law, and Admiralty.

1. As to the Court of Chancery:—

Previously to 1725 all monies of the suitors directed to be brought into the Court of Chancery were deposited with the masters or usher of that court. The interest made by them on such monies as had to remain uninvested formed a most important part of their emoluments. It appears by the evidence given in the very interesting trial of Lord Chancellor Macclesfield in that year, as reported in the State Trials, that the price or bribe at which the Lord Chancellor of those days sold each Master's appointment depended upon the amount of suitors' cash deposited in the particular office then vacant. The evidence shows that the masters deposited large portions of these monies with the goldsmiths to be lent at interest; but the South Sea Bubble which had occurred at that time having caused many of these goldsmiths to fail, the masters were unable to repay to the suitors the monies so deposited with them,* and the deficiency, which amounted to upwards of £100,000, had to be made good to the suitors by the produce of a tax imposed by the Act of 12 George 1, c. 33, on future suitors not only in Chancery, but in all other courts of justice in England and Wales.

To obviate such mishaps in future, it was determined to appoint an Accountant-General, and in 1725, the Act of 12 Geo. 1, c. 32, was passed, regulating the modes of providing for the safe custody of all monies of the chancery suitors paid into court. This Act, though it provided with sufficient care for the safe custody of the suitors' future monies, yet clogged the mode of paying in and paying out such monies, and of selling and purchasing stock, with many cumbersome and expensive proceedings and dilatory checks: these it is hoped will be removed or diminished by the commission which it is rumoured is about to be issued for the long-desired inquiry into the mode of transacting the business of the suitors in the Accountant-General's office, and of dealing with the suitors' funds.

Neither the last-mentioned Act of Parliament, nor any subsequent one, has established that kind of financial supervision which any banker or financier would exercise over funds placed under his control. But this observation belongs to an after part of our subject.

The Court of Chancery, as a banker, has now in stock and cash upwards of fifty millions of suitors' property in its hands. By arrangement with the Bank of England, £300,000 cash is the amount of cash balance to be kept for the bank remuneration; but at this moment we believe it to be upwards of a million, upon no part of which are the suitors allowed any interest; and yet the present rate of discount is 7 or 8 per cent.

Another account (which may be called an account of "waifs and estrays") still remains to be mentioned, and (looking at the small amounts from which it has been gathered together) its existence affords another proof of the utter incapacity of the present system to deal properly with suitors' monies.

Every chancery suitor appealing to the Court of Appeal in Chancery from a decree of the Master of the Rolls or a Vice-Chancellor, is required to make a deposit of £20, and this sum was up to 1852 deposited with the senior registrar of that Court. In consequence of the neglect of the successful suitor on the termination of such appeal to apply for payment to him of such deposit, a large amount had been accumulated, which rumour assigns as having been invested by the senior registrar in the purchase of £10,000 Stock, the interest whereof was received by him, and appropriated to his own use; and this course had been considered perfectly legitimate so long as he was able to replace the amount so invested when demanded by the suitors. In 1852, the amount of such stock, and of the cash in the hands of the senior registrar arising from these deposits, was, pursuant to Lord St. Leonards' Act of 15 & 16 Vict. c. 87, s. 41, transferred and paid into the Bank of England, to the credit of the Accountant-General of the Court of Chancery, to an account entitled, "The Appeal Deposit Account;" and all future deposits have, pursuant to the same Act, been paid to the senior registrar, and by him paid into the same account every three months. The 41st section of the same Act directed that "the monies which shall from time to time be standing to such account, shall be paid and applied as the Court of Chancery shall from time to time in that behalf direct." But it is believed this authority has never been exercised, and that the interest which has since 1852 accrued on the stock so transferred into court in that year, has remained idle on this account, and has not been applied for the benefit of the suitor.

2. As to Courts of Common Law.

All monies paid into the Court of Queen's Bench by the suitors are deposited at the private bankers of the Masters of that Court, for the time being—a course not dissimilar to that which prevailed in Chancery previously to 1725, when it was attended by the disastrous results before mentioned. It appears at p. 125 of the Report of 1860 of the Commission on the Concentration of the Courts of Justice, that the cash balance of suitors' funds then in the several Courts of Common Law was £37,023 7s. 3d.; viz.:—

Queen's Bench	15,482	7	10
Common Pleas	10,227	8	7
Exchequer of Pleas	11,313	10	10

What security for the repayment of these monies so deposited the suitors have, we know not.

In a report of the select committee of the House of Commons on Sinecure Offices in 1834 (printed 25th July, 1834, and cited in the evidence in the Report of the Commission on the Concentration of the Courts,

* In the celebrated picture of the South Sea Bubble in the Vernon Gallery, a Master in Chancery with a bag labelled "Chancery Suitors' Moneys," has been unaccountably omitted.

p. 91), the question of Lord Ellenborough's right as chief clerk of the King's Bench, to the interest on monies paid into court, and placed in his hands as chief clerk, is fully discussed. Lord Ellenborough claimed that, as he was bound to pay out the sum to a certain point, any interest he might make belonged to him as his perquisite; but the committee stated that they conceived that this interest should be dealt with "as money held in trust for the public."

3. As to the Admiralty Court.

It is only a few years since (1853), the newspapers announced that the then Registrar of the Court (Mr. Swabey) had decamped with a large amount of the suitors' monies—and in the Appropriation Act of 17 & 18 Vict. c. 121, s. 23, authority is given to issue out of the consolidated fund "any sum or sums of money not exceeding £25,000, to enable the Registrar of the Court of Admiralty to discharge the legal claims of the suitors of the said court in the year ending 31st March, 1855." The money paid into the Court of Admiralty continues to be paid to the registrar, but to guard against any similar occurrence it is stated by the present registrar in his evidence before the Concentration of Courts Commission (report, p. 77) that soon after his appointment in 1853 the Treasury made an order that the account to his credit at the Bank of England to meet current expenses should not exceed £5,000, and that the excess beyond that sum should be paid over to the Paymaster-General, and be held by him to the credit of the Admiralty Court deposit account, *so that the Government might have the use of the balances.* We consider, however, any use and profit by the Government of these monies wholly wrong, and that so long as any special tax is imposed on the suitors towards the maintenance of the Court, they are entitled to this profit in reduction of such special tax.

All monies so deposited by the suitors in either of these courts remain dormant, and do not fructify and bear interest for the benefit of the parties entitled thereto, as monies do which are deposited by prudent individuals in a savings bank, and this we hope will be rectified by the rumoured Commission. It is an admitted fact that no suitor willingly pays his own money into any court, and the greater portion of the funds in the Court of Chancery have been paid in either by trustees, or by purchasers of estates sold by that court, and it appears very hard that money so paid in—whether it is ultimately adjudged to belong to the person paying it in, or to others—should remain in an unproductive state. In reply to this it will be said "it should have been invested;" but where? considering that Consols were until the present month the usual investment authorised by the Court of Chancery. Such investment in Consols is all very well when it is certain it will remain in court during a course of litigation for a considerable period; but inasmuch as the average duration of suits in chancery is but three years and half, and a great part of the monies paid into the Court of Chancery (of which the larger portion consists of the parliamentary deposits of promoters of public undertakings) are paid out within six months, it is obvious, considering the chance of the fluctuation of the funds, that it would be most imprudent and improvident to make any such investment for so short a period.* The average weekly balance of the chancery suitors' cash in the Bank of England from 13th January, 1859, to 15th August, 1859, was upwards of £1,000,000, of which more than half-a-million probably arose from such parliamentary deposits, and from January, 1846, to July in 1846, such cash deposits averaged upwards of eight millions cash. When any one happens to have a larger balance at his bankers than he has immediate occasion for, or any client of a solicitor has money waiting to complete a purchase, he does not allow it to remain unproductive, but places it at one of the joint stock banks on a deposit account; and either a similar system, or the system proposed in the New Post Office Savings' Bank Bill, whereby a certain even though small rate of interest may be allowed for each entire calendar month, on every full pound sterling of suitors' cash so deposited, we hope to see recommended by the members of the rumoured Commission.

In our next article we intend to point out the banking or financial statistics of the bankruptcy and insolvent courts, and of the county and some local courts, and perhaps of the Irish Court of Chancery.

* As to the risk of asking for such investment we may refer to the decision of Vice-Chancellor Stuart in *Tempest* v. *Wickens*, 2 Jur., N.S. p. 10, and the consequences resulting therefrom.

ACKNOWLEDGMENT OF DEEDS BY MARRIED WOMEN—3 & 4 WILL. 4, c. 74, s. 91.*

Upon this section a question has arisen, whether a deed executed pursuant to an order made under it requires acknowledgment or not. As in this question, which has been gravely entertained, every "perpetual commissioner" will, of course, feel an interest, we propose to consider it somewhat at large. In the absence of authority to the contrary, we should have thought it pretty clear that the wife must acknowledge the deed. Her only ability is created by s. 77, which clogs it with two essential requisites:—1. The concurrence of the husband; 2. The acknowledgment of the wife. These conditions fulfilled, her disposition is to have the same efficacy as if she were a *feme sole, i.e.*, for all the purposes of the transaction which is the subject-matter of the deed; or, more accurately speaking, for the purposes of that transaction, so far as they are embraced by the contents and incidents of the deed, she is, but only on the terms prescribed, declared to be discovert. By s. 79 every deed to be executed by a married woman, for any of the purposes of the Act (with an immaterial exception) is, upon her executing the same or afterwards, required to be produced and acknowledged by her as her act and deed; and then s. 80 directs an examination as to free volition before the acknowledgment by any married woman of any deed made under the Act shall be received, and declares, by the awkward and superfluous tail-piece "and in such case, &c.," (*i.e.* literally the *case* of her not being permitted to acknowledge), or means to declare (or reiterate) that her execution of the deed, unless or until acknowledged, shall go for nothing; or it may be meant (though not quite consistently with the "or afterwards," *i.e.*, at any future time, of s. 79), that a refusal of permission to acknowledge shall render the execution incapable of acknowledgment—a strange and inconvenient result. Thus all deeds of all married women, so far as any extraordinary force is given by the Act, must have the requisites of the husband's concurrence and of the wife's acknowledgment, while the means of complying with this last requisite are withheld until a certain ceremony has been gone through. But by s. 91 the first requisite (the husband's concurrence) is struck out in certain exceptional cases. That section empowers the Court of Common Pleas (most unwisely entrusted with such a discretion, having regard to its ordinary functions and to its ancient fine-and-recovery predilections), under special circumstances attending the husband, to dispense by its order with his concurrence "in any case in which his concurrence is required by this Act or otherwise," but not, in terms at least, with any other requisite of the Act, and the section then proceeds to declare that all acts of the wife done "in pursuance of such order," (*i.e.*, an order dispensing with the husband's concurrence) shall be done "in the same manner as if she were a *feme sole*," and when done shall be as valid as "if the husband had concurred." Now the question is, whether the act may

* See 4 S. J. pp. 910 and 922.

be done by an unacknowledged deed? This section supposes a "case" within the general purview of the Act—a case contemplated and provided for by the previous enactments relating to the dispositions of married women; it qualifies those enactments by engrafting a dispensing power. It is not a simple, substantive enactment, enabling a married woman, if the Court of Common Pleas shall think fit to make an order dispensing with her husband's concurrence in a particular act, to do that act irrespectively of all that has gone before in the same statute—to do that act as "by her own recovered might" not only with all the legal effect of a single-woman's deed, but with all the personal volition of a single-woman. The ambiguity (for ambiguity there is) appears to be mainly created by the words "shall be done by her, &c., *in the same manner* as if she were a *feme sole*," but these words must be construed with a due regard, as well to the concluding member of the same clause, "and when (so) done, &c., shall (but without prejudice to the rights of the husband, &c.,) be as good and valid as they would have been *if the husband had concurred*," as to the previous context, and to all the preceding provisions in relation to the married proprietress, and, so construed, can hardly be taken to import, as respects the particular act, not qualified competency, but absolute emancipation. Those equivocal clauses "and all acts, &c.. shall be done by her in the same manner as if she were a *feme sole*, &c.,"—"and when done, &c.," laid together, seem to purport nothing more than "and all acts, &c., may, notwithstanding any of the previouf enactments, be done by her without the concurrence o- her husband, as effectually as if the husband had concurred." The Legislature could not well have intene ded an imperative mandate on the *feme* to assume ths free agency of discoverture. This section is part of a general scheme, not an isolated provision; "the acts, deeds, or surrenders" are such "acts, deeds, or surrenders," only as fall within the previous sections, omitting the one ingredient of the husband's concurrence. The larger construction would ignore s. 77; the assurance would not necessarily be an instrument under seal (a *deed*); yet this section (91) starts by putting the case of a husband "incapable of executing a deed or of making a surrender of lands held by copy of court roll," being the two forms of assurance to which the antecedent enactments as to married women confine the exercise of her disposing power. This section, therefore, was hung on to these enactments as a rider, not as an over-rider. This would have been plain enough (omitting the "or otherwise") but for the superadded clause "and all acts, &c.," which is really nothing more than the confusion of a cloudy mind labouring to clear itself, till the first faint glimpse of meaning vanishes in the fog of elucidation. It may be urged that where the husband is not a party, and where the Court grants the wife's application, a separate examination, which must precede the acknowledgment, is an idle ceremony; but may not the deed be in favour of the husband or the husband's relative, and, though he may be far away, yet induced by past menaces, or by the coercion of a telegram? The state of circumstances which existed at the date of the order may have changed. It must be confessed that this section is confused in matter and form—"the latter end of the Commonwealth forgets the beginning." We more than suspect that it is not the handy-work of the very able, candid, conscientious, and, we fear, it may be added, ill-requited planner of the substitute law and framer of its principal provisions; for (with its "or shall from any cause be incapable, &c.," —"or from any other cause whatsoever," —"or otherwise," —"and all acts, &c"—and "when done, &c.," its general incoherency, superfluity, and even grammatical inaccuracy) it savours strongly of the ingenuity which enacted that a contingent remainder shall be an executory devise or use, or (to use the sarcasm of the present Lord Chancellor, in speaking of the now repealed enactment) "that a square shall be a circle." It was inevitable that out of a scheme so elaborate and untried, provisions so numerous and complex, (deranged, mutilated, and interpolated by the necessity of coaxing obstinate prejudices, quieting crotchety fears, sopping the many-headed guardian of the ancient mysteries, and running a race with official impatience) a host of questions should arise to perplex the practitioner, especially in regard to the new conservative office of protector. These questions are floating about in the profession and ought speedily to be set at rest. With the lights now afforded by many years' experience, the Act should be forthwith reviewed, retrenched, reconciled, explained—in short, reconstructed on the same basis, with improvements suggested by its past working, and, yet more urgently, by an advanced period of our judicial policy, by the decay of old attachments and the growth of new desires. Among other improvements the jurisdiction of the Court of Common Pleas in these matters should be transferred to the Court of Chancery, or rather (as the business must be inconsiderable) to one of its branches—enrolment and acknowledgment should go together. We shall hardly have credence for the statement that the Rules of the Common Pleas were prepared and adopted without the aid or approval of the experienced framer of the Act and not without some discourtesy. We may add, that the highest bid, as we are informed, yet made for an amended Bill (affecting the "wealth of nations" and the well-being of millions) is somewhere about the fee of a leading counsel on a brief of no extraordinary bulk or specialty. With a figure just a trifle higher, an inaugural dinner, a modest share of the credit, and the whole onus of faults and slips, there would be nothing wanting to induce an efficient hand to do this needful national work, for its own dear sake, but—leisure, love, and patriotism. It has been said, that

> "The *tampering* world is subject to this curse,
> To physic its disease into a worse;"

and certainly there is no patient on whom that curse has fallen more grievously than the Law, which, by gratuitous nostrums and cheap remedies, as shown by the large amount of unpaid or ill-paid doctors' Bills, has been brought into a state of chronic dyspepsia. While the individual citizen is prescribed for, the body-politic is quacked.

MOSE'S CASE.

Satirists and dramatists have never been sparing of the law or lawyers. In all countries, so far as civilization extends, the profession of the law and its processes must, in the nature of things, become identified with a class of cases which reflect little credit upon either, and which powerfully enlist the sympathies, if not the passions, of our common nature against both. The misfortune is that one such case is more than enough with the unthinking multitude to balance all that is of honest and good report which may be set upon the other side. However this may be, lawyers, more than all other men, have certainly the deepest interest in probing these causes of scandal, and dragging into the light of day whatever of such injustice and wrong would seek to shelter itself at the expense of the entire profession and of the law itself.

A few days ago, the inhabitants of the quiet university town of Cambridge were shocked beyond measure by the occurrence of a tragical and lamentable event. On the morning of last Sunday week it became known that a Mr. John Bailey, a highly respected tradesman of the town, had committed suicide; and the rumour ran that he was driven to this dreadful act by his want of success and bitter disappointment in a Chancery suit. Extraordinary and unlikely as was the reason assigned, its truth was proved beyond doubt at an inquest which was held on the following day, before the Borough Coroner and a jury of towns people. The ver-

dict was, that "the deceased shot himself while in a state of temporary insanity, which was induced by the litigation relating to the matter of Alfred Mose." The facts which transpired, although not nearly so definite and satisfactory as might have been expected in such a case, enable us to give some slender account of this unhappy suit. It appears that Mose, the person named in the verdict of the jury, has been long known in his neighbourhood as a claimant for considerable real estate, consisting mainly of houses in Reading. For many years Mose's case had been spoken of in the neighbourhood, and was fast becoming one of the local myths, when Bailey, most unhappily for himself, was induced to mix himself up with it. An agreement was entered into, under which Bailey was to receive "half the clear profits" arising from the successful prosecution "of the case;" and thereupon he immediately devoted himself to his miserable and hopeless task. Mose some years before had been a bankrupt, and the creditors' assignee of his estate and effects having died, it became necessary to have a new assignee named before the institution of legal proceedings, and Bailey for this purpose had himself appointed. Having thus acquired a legal status and a right to file a bill in Chancery against the parties in possession of the estate, that first step was unhappily taken. Of what passed between this and the catastrophe which abates the suit, little was stated at the inquest beyond the fact that Bailey had paid to his lawyers not less than £170, in full expectation of the success of his suit, and that very shortly before his death he received a letter from them to the effect "that it would be better to dismiss the bill, and that he would have to pay costs." Having been assured "when he first took up the case that he would have nothing to pay, and that the other parties would have all to pay," he was unable to stand this blow, which not only crushed his hopes of success in the suit, but overwhelmed his little business and good name with bankruptcy and disgrace.

Now, although the evidence as to the suit adduced upon the inquest was by no means complete, yet there was sufficient to yield serious grounds for reflection upon the duty of lawyers in connection with such cases as Mose's. It came out that there was a letter to Mose from Mr. Kenneth Macaulay, written three years before the commencement of Bailey's suit; and from this it appeared that Mr. Macaulay, who was then as now member for the borough, had himself, with a generosity and in a manner worthy of his high character, investigated the claim of Mose, "which he could not see any gleam of a chance of establishing—even if Mose was in a condition to follow up the matter with vigour." It also appeared that Mose was at that time actually in prison for non-payment of costs which he had incurred in another Chancery suit relating to the same matter—which costs Mr. Macaulay ultimately paid; and indeed it was quite notorious that Mr. Macaulay was not the only competent person who, yielding to the earnest solicitations of Mose, had investigated his case, and arrived at an opinion entirely unfavourable to him. It is stated that this fact was not only well known in the locality of Mose's residence, but that it was explicitly communicated to the legal advisers who instituted the suit in which unfortunate Bailey was plaintiff. It is also said that the former suit included as a defendant a clergyman of the highest reputation, who was nevertheless expressly charged with being party, together with the other defendants, to a conspiracy which, if the charge was true, was of the vilest and most outrageous character; but which was most positively denied by the clergyman and his co-defendants, and indeed seems to have been made without any justification or reasonable pretence. It has been stated, and it appears not unlikely, that all these circumstances were in the knowledge of the legal advisers of Bailey prior to the institution of his suit; and although an answer to his bill had been put in yet that it conveyed no information which could not have easily been obtained by private inquiry, or which justified the relinquishment of the suit if there had been anything to justify its institution. It is no wonder then that both the coroner, who was himself a lawyer, and the jury, amongst whom Bailey seems to have stood in the highest repute, should have expressed themselves indignantly at the conduct of Bailey's legal advisers; and without at all venturing to decide upon this question, with our present scanty materials, we find it difficult to avoid participating in the foregone conclusion of those who were present at the inquest. Upon this point, however, it is not unlikely that we may before long have better grounds upon which to form our opinion. For the present we desire to call attention to the case for the sake of the lessons which it affords, and also because we ought not to omit the occasion of insisting, in the most emphatic terms, that neither lawyers, nor the law itself, should be visited with any of the odium arising from such a case as we have been considering. The processes of law may, no doubt, be abused by unscrupulous persons, and in such hands may be made instruments of torture. But, happily, there is far more difficulty in procuring in our profession agents for this purpose, than the public generally is willing to believe.

It is, moreover, a salutary reflection that all persons actively engaged, whether as principals or agents, in such proceedings, expose themselves as a rule to the risk of as much vexation and suffering as the luckless objects of their litigious propensity; and although in such a case the lawyer may appear to occupy a position of comparative immunity, in truth he is liable to the loss, not only of his money, but of his character. The law has wisely discountenanced the *trade* of litigation, and looks with aversion upon arrangements to carry on suits for the benefit of strangers who supply the sinews of war; and one useful lesson to be drawn from this sad story is the folly of any lawyer who endeavours to countervail the policy of the law in this respect, by lending himself to the prosecution of such suits. There are few practitioners who have not been often earnestly solicited to take up some such "case" as that of Mose. Everybody knows some madman or schemer who thinks or pretends he is entitled to estates, of the possession of which he is—according to the judgment of common sense—deprived by the rightful owner. Fortunately for the good of society, and the character of our profession, it is generally a matter of some difficulty to find a lawyer who is willing to be identified with these cases; and it would have been lucky for luckless Bailey if that first obstacle had been more difficult than it appears to have been in his case.

We are compelled to hold over until next week an article upon the recent examination of articled clerks, and also some articles upon other subjects.

LIABILITIES BY SPECIALTY AND BY SIMPLE CONTRACT.—INCONVENIENCES OF THIS DISTINCTION BETWEEN CONTRACTS.

II.

The account which we gave, in the former paper* on this subject, of the probable origin of sealed documents, and of their introduction and effect in the early stages of our law, goes far, we think, to show that covenants at that period had seldom any independent existence, but were merely incidental to a conveyance. Where there was a conveyance by feoffment or grant, there might or might not also be covenants; but covenants, it would appear, were hardly ever entered into at that

* *Ante*, p. 213.

time, except as subsidiary to an actual conveyance. Now deeds were used only to pass estates in land, and hence we can find a reason why covenants, when they became a frequent form of contract, did not at common law bind estates in land after the death of the covenantor, unless the covenant, like a conveyance, contained the word "heirs." In the first stages of our law, the courts preferred accommodating the existing writs and forms of action to inventing new ones. Covenants, it appears, were but little, if at all, known to our commercial law under the feudal *régime*; but as such forms of contract were the only ones then in frequent use, as comprising those causes of action which alone could arise generally throughout the kingdom when land was the staple of wealth, a necessity arising from the predilection for established forms which then prevailed, would seem to have existed for permitting an action of covenant to be brought in the centres of commerce, although the agreement was not entered into by deed. Accordingly, we find that by the custom of London and of other localities, an action of covenant might have been brought under an agreement by parol (1 Lev. 2). These customs, however, as contravening the general rule of law, are construed strictly; so that an executor is not chargeable under such. To the customs of commerce, then, which do not brook delay or intricacy of rights, we are indebted for the first inroad upon the forms of contract specially favoured by the common law. Equity, likewise, lent her plastic hand in correcting the technical analogies to which the doctrines relating to specialties gave rise. Positive legislation has, also, been applied to level the distinctions between contracts, both expressly, as, for instance, in cases of bankruptcy, as also indirectly, as in the case of the Winding-up Acts. It has been determined that under one of the latter Acts, a call transmutes and levels all securities to the order of simple contract. We shall now endeavour to detail some of the inconveniences which have been occasioned by the distinction of liabilities into those raised by simple contract and those raised by parol. From a consideration of these inconveniences it will, we think, be manifest that the complete eradication of the distinction is the only remedy in any degree adequate to the evil.

The inconveniences of the distinction of debts into different classes, each having its peculiar rights, are very clearly shown by the order which an executor or administrator must observe in the payment of the debts of the deceased whom he represents. In the preceding paper on this subject, we stated that the priority of judgments in administration cases did not conflict with the reasons which appear to us to require the abolition of the existing distinction between debts not of record; inasmuch as judgments are matter of process. We do not desire to baulk an active creditor, whose contract no longer rests *in fieri: vigilantibus non dormientibus subveniunt leges.* To judgments, then, we gladly yield their present priority, especially as Lord St. Leonards' Act of last session has revived the security afforded to executors by the statute 5 W. & M., c. 20, the Docketing Act. The only suggestion we offer in connection with this priority is, that rent, which is at present merely of the order of a debt by specialty, should be constituted of equal rank with debt by judgment. We would, also, suggest that statutes and recognizances should be rendered co-ordinate with judgments, only that, as the former have become somewhat obsolete, we do not wish to see legal transactions complicated by the use of different kinds of debts or obligations of record. We, therefore, think that the complete removal of statutes and recognizances from all legal transactions in future, and the substitution of judgments in all cases for those antiquated securities, would so far tend to prevent unnecessary complication.

We may here briefly state the order to be observed in the administration of assets. First in order are crown debts; then, judgments; next, statutes and recognizances; and this order is to be observed whether the assets are legal or equitable. So far as the assets are equitable (and real estate can alone constitute equitable assets), all specialty and simple contract debts are paid *pari passu*. As to legal assets, the specialty debts of the deceased, whether binding the heir or not, are paid *pari passu* out of the personal estate, Wms. Pers. Pr. 97, but preferentially to debts by simple contract, ib. p. 100. Specialty debts binding the heir should be paid before those not binding the heir out of real assets, out of which the latter class of specialties and debts by simple contract are paid *pari passu*. To the class of specialty debts belong debts by obligation, debts by covenant, whether for a sum certain, or for damages on a breach of covenant; and debts for rent, whether the land for which the rent is due be held under lease by deed, or merely by parol.

These four kinds of debts are of the same degree, *Plumer* v. *Merchant*, 3 Burr. 1380, *Gage* v. *Acton*, 1 Salk. 326. But in the administration of the separate estate of a married woman a bond debt is not entitled to this rank, because as a bond it is void; the debt secured by it is therefore only of the order of simple contract, *Anon.* 18 Ves. 258. An executor is also bound to pay a debt by specialty as on a bond, even though it be not yet due, in priority to debts by simple contract; the obligation being a present duty, whereof the condition is merely a defeasance, 11 Vin. Abr. 304. We notice with pleasure, in the case of voluntary bonds, one class of exceptions to the stringent exactions of specialties. Voluntary bonds are postponed in the administration of assets, to the simple contract debts of the deceased. If the assets are insufficient to discharge all the liabilities, and if these are both by specialty and by simple contract, the office of an executor would appear to be somewhat of the nature of a *damnosa hæreditas*. Nay, even if the debts are of one class only, yet, owing to the confusion which the classification of assets and debts into different classes has introduced, he can hardly undertake the administration with any degree of confidence that some latent technicalities may not be the means of imparting to him an undesired amount of legal knowledge at a future day, when he may be called upon to pay out of his own estate the testator's debts, and for the want of a professional education on his own part. Specialty creditors, as we have stated, and as our readers are probably well aware, are entitled to priority over creditors by simple contract only, so far as the assets are legal; as equity acts on the maxim that "*equality is equity*," and pays specialty debts only *pari passu* with those incurred by simple contract. If, moreover, a specialty creditor has to resort for a portion of his demand to assets that are equitable, he will be postponed until the simple contract creditors have received the same proportion of the equitable assets that he has received from the legal assets. Equity requires this according to the maxim that "*he who seeks equity must do equity*." A sum due from an administrator who has entered into an administration bond is not a specialty debt to the administrator *de bonis non*, *Parker* v. *Young*, 6 Beav., 261; even though the sanction of the Ecclesiastical (Probate) Court has been obtained; *Bolton* v. *Powell*, 14 Beav., 275, 287; although it is a specialty to the ordinary. This absurdity appears to us not to have even a single agreeable feature, upon which the imagination could for a moment pleasantly dwell, or endeavour to draw therefrom some extenuation for the paradox. The bond, indeed, is confessed to the Ordinary, and in a court of law he alone could sue upon it. But, in equity, if it were only to avoid circuity of action, there is a manifest reason that he should be regarded as a trustee for the administrator *de bonis non*. We really can conceive no greater perversion of so-called scientific reasoning than is exemplified by this rule of law and equity. The acumen of an executor must not be content with a scrutiny of the principles referred to in the foregoing remarks. He has carefully to distinguish the portion of his testator's liabilities by specialty, which is to be paid on contingencies

that have not yet occurred from those liabilities by specialty, which are to be paid *in futuro*—a discrimination, the making of which, with the elaborate accuracy which a future Chancery censorship may require, his own sagacity aided by distinguished professional advice, may entirely fail of accomplishing. Amidst the dialectic labyrinths into which his mind shall have been plunged, the only legal principle he will be likely to remember is the costly one, "*Ignorantia legis neminem excusat.*" The advice of the Court, which he can now obtain on petition without suit or by summons, under 22 & 23 Vict. c. 35, is his only adequate security. The rule of law just stated, in respect to liabilities of the description appears to be that liabilities by specialty which are contingent, and upon which it is uncertain whether anything will ever become payable, shall not stand in the way of simple contract debts; but, that if the liabilities will certainly become due, though on a future day, the special securities are then entitled to the priority of their class; *Atkinson* v. *Grey*, 1 Sm. & G. 577, 581. Thus, a bond conditioned for indemnity, *Eeles* v. *Lambert*, *Aleyn*, 40 s. c., cited in *Lancy* v. *Fairchild*, 2 Vern. 101; a statute to perform covenants which are yet unbroken, Harrison's case, 5 Co., 28 b.; a recognizance conditioned to pay a certain sum or perform a certain act on a contingency which may never happen, as for instance when A. B., an infant, shall attain his majority; a covenant for further assurance; these and similar securities, prior to the breach of the condition, or the happening of the contingency specified, must not be regarded by the executor as entitling him to retain assets to meet these possibly forthcoming demands, to the prejudice of the simple contract creditors of the testator. Of this class of contingent securities, there appears further to be two derivative varieties; in one class of which, viz.: in those cases in which a breach of the condition has been committed by some positive act, the executor will be answerable out of his own property for a *devastavit*; while in those cases which are merely contingent, as in the case we have quoted, of an infant's attaining his majority, the specialty creditor is, in case of a deficiency of assets, remediless. Securities for indemnity, given by a principal debtor to his surety, ought, we think, to have been considered rather as liabilities payable *in futuro* than as contingent, inasmuch as the contingency is dependent upon the principal debtor for its realization; and this was held in *Goldsmith* v. *Lidnor*, 1 Roll. Abr. 925, tit. Exors. (Q.) pl. 4, s. c. This old case appears, however, to have been disregarded by the current of modern decisions. When the contingency has taken place, or the condition has been broken, the security is equally a specialty, as before stated by us, whether the debt is ascertained or the damages are unliquidated; *Cox* v. *Joseph*, 5 T. R. 307. Finally, a specialty creditor of a testator, if injured by a *devastavit*, is but a simple contract creditor of the executor; *Charlton* v. *Low*, 3 P. Wms. 331. We can conceive nothing more inconsistent with the supposed rights of a creditor by specialty than the decision in *Charlton* v. *Low*. But the doctrines relating to specialty debts seem, like the laws of chemistry, incapable of assisting us in determining the result of any future case which may have a single element different from the components of those already analysed by judicial solution.

The anomalies which the distinction of debts into different classes has occasioned in cases of contracts *inter vivos*, appear to have been generated without any regard whatever even to the principles of technicality. Thus, the recital of a debt under hand and seal does not in law conclusively amount to a debt under seal; *Lacam* v. *Mertins*, 1 Ves. sen. 313. And the recital of its existence does not amount to an implied contract under seal to pay it; *Iren* v. *Elwes*, 3 Drew. 25. The point of this decision appears to be that sealing is a formality recognised by the law, not primarily or chiefly as a special mode of evidence, so much as an essential ingredient of the contract itself. For if it affected contracts by estoppel, and not by a direct and primary operation of its own, the recital ought to have been conclusive that the debt was of the highest nature, and had all the requisites which the law deems important, according to the maxim *Omnia presumuntur rité acta*. And yet the doctrine of estoppel has considerably affected the construction of similar cases; as, for instance, *Stone* v. *Van Heythusen*, Kay 721, in which case the fact of the creditors not being a party to the deed was considered material. Now, this could not be a very important circumstance, except in relation to the doctrine of estoppel, which, as our readers are aware, operates only between the parties to a deed. The reader will find in Kay 725, 726, and 3 Drew. 34, cases which exercised the acumen of the Court in no ordinary degree in determining whether recitals were only inoperative statements, or, on the other hand, by reason of their bearing upon the context, were capable of being construed as indicating an intention on the part of the debtor to transmute his simple contract debt into a debt by specialty.

Prior to the Mercantile Law Amendment Act, 1856 (19 & 20 Vict. c. 97, s. 5), if a co-obligor to a bond paid even as surety the debt secured by the bond, he became only a simple contract creditor of the principal debtor. The surety was entitled in equity to an assignment of all collateral securities held by the creditor; but as the bond or judgment itself, which was the primary evidence of the debt, became extinguished by payment, he could not claim an assignment of it. His rights were thus determined by the stringency of the principal creditor, in exacting manifold securities from the principal debtor. Liabilities under covenants, as we have before observed, are of the same rank, whether they be for sums certain or sound merely in damages; *Plumer* v. *Merchant*, 3 Burr. 1380; *Freemoult* v. *Dedire*, 1 P. Wms., 429. Yet, in *Whitchurch* v. *Bargutan*, 2 Vern. 272, where the husband, having agreed by marriage articles to settle a certain sum upon the issue, settled lands which were insufficient in value, and devised his unsettled lands for payment of debts, it was adjudged in equity that, as the articles did not contain any covenant in regard to the value of the land, the widow and children, although entitled to compensation, were yet to be postponed to creditors by bond. So, also, mortgage debts for the payment of which no covenant has been entered into, are only simple contract liabilities; *Perrot* v. *Austin*, Cro. Eliz. 232. If a covenant for the payment of rent be contained in a lease, the landlord will be entitled to recover arrears for twenty years; while, if there be no such covenant, he can only recover arrears for six years. Rent in all other respects is equivalent to a debt by specialty; but, for the completeness of its legal incidents, special conveyancing is necessary—rent being an incident of tenure arising primarily from the privity of estate between the landlord and tenant. Yet with all these feudal and common law advantages, a covenant for its payment is still rendered necessary both to strengthen its feudal incidents as also to impose a personal obligation on the tenant independently of the privity of estate. Now, as voluntary bonds are postponed in administration suits to simple contract debts, why should not covenants which increase the landlord's rights beyond the standard of common law, be deemed so far voluntary, and, therefore, puisne to the simple contract debts of the tenant. We merely wish to show that, once technical deductions were admitted to flow from the doctrines of contract by specialty, they should have been rigorously carried out to their legitimate consequences. Such an interpretation of the law would have been "inconvenient" indeed, but the effort to harmonise technical deductions with common sense and urgent necessity could only be attained, as has been the fact, by the introduction of uncertainty—a legal mischief still more to be deprecated than the practical application of technical reasoning based upon indistinct and erroneous data. Consistency and expediency may, however, be very easily subserved by the reform which we advocate.

Breaches of trust, even though the trust be created by deed, are only simple contract debts of the defaulting trustee. As, prior to the 3 & 4 Will. 4, c. 104, lands were not liable to the simple contract debts of a deceased owner, a *cestui que trust*, prior to the passing of that Act, required special conveyancing in order to have any remedy whatever against the real estate of a deceased trustee who had been guilty of a breach of trust. An acknowledgment under seal of a sum received under the trust deed will constitute the debt a specialty; an express agreement by the trustees to discharge the trusts will, likewise, have the same effect. But these cases really amount to positive and express stipulations, independently of that raised by the fiduciary position of the party. The law has in such cases hitherto acted not unlike a swindler, whose honour would not permit him to deceive except according to the standard routine. The law of specialties has transcended the ordinary limit of error incident to all human rules, and has been oppressive when it should have been lenient, and lenient where rigour was required. In point of fact, the security afforded by a deed is altogether precarious, and sometimes fails, as we have shown, even in cases such as those arising under trust deeds, where the peculiar privileges of a particular class of contracts should be viewed with least disfavour. *In Robinson's Executor's* case, 6 De G. M. & G. 572; 4 W. R., 186, it was decided that a call under the Winding-up Act of 1848 constitutes only a simple contract liability, even though the call be made under a deed executed by the contributory, or by the party whom he represents. This decision was arrived at only after two hearings on appeal, first before the Lord Chancellor (Lord Cranworth) sitting with the Lords Justices, and subsequently before the same learned judges, assisted by two from the other side of Westminster Hall (Cresswell, J., and Martin, B.), the result being that the judgment of the Vice-Chancellor Stuart was affirmed, but against the doubts of both the Lords Justices. So great was the difficulty in discovering what the law on this point, simple as the question involved was in itself! An Act of Parliament has since given the sanction of the Legislature to the doctrine laid down by the Vice-Chancellor, and affirmed by Lord Cranworth with the advice of two common law judges.

The current of judicial authority has harmonised with the rule of common law, in holding that a liability by specialty can only be raised by express words to that effect; *implied* covenants applying to real estate solely. The general scope of legislation in this department has likewise been to abridge the sphere of the operation of contracts by specialty. Thus the Bankrupt and the Winding-up Acts 1848, 1849, as already stated, as also the 14 & 15 Vict. c. 25, s. 1, which relates to tithe, have in cases falling under them, changed special into simple contract liabilities. The only retrogressive enactment on this head has been the 8 & 9 Vict., c. 106, s. 3, which requires that leases for a period of more than three years shall be created by deed. But neither judicial nor legislative tendencies are competent to do anything more than to cause still further confusion, while the distinction itself remains as the basis for evolutions. If all contracts, as distinguished from specific charges, were reduced to the one uniform standard of debt by simple contract, all those complicated anomalies which we have endeavoured to detail, would cease to lengthen conveyancing and confuse our law.

The English Law of Domicil.

(By Oliver Stephen Round, Esq., of Lincoln's-inn, *Barrister-at-law.*

VI. (*Continued*).

Compulsory Domicil.

At the conclusion of the last article I was considering the domicil of servants of the Crown, upon which point I referred to the case of *The Commissioners of Inland Revenue* v. *Gordon's executors*, 12 Dec. C. Sess. 657, which is valuable as laying down the following doctrine: that it never was originally understood to be doubtful that the numerous functionaries in India and our Colonies effectually acquired domicils by their residence in the discharge of their duties, though it was clear that, but for their appointments they never would have quitted their original home. Even holding the power of the Crown to be as extensive as in this case was assumed, the only effect would be that the Crown had the power to oblige the party to change his domicil which it had at one time authorised him to acquire, and if he died before the power was exercised, and before the change took place, the domicil which he had acquired and which he retained till the moment of his death, must afford the rule for the determination of all questions regarding his personal succession. But it was a mistake to say that the Crown had the power to make the party change his domicil: the order to return might have been issued, but, according to the regulations affecting half-pay, the only consequence of his refusal to obey would have been the forfeiture of his half-pay (*vid. Cockerell* v. *Cockerell*, 4 W. R. 730,) so that in no sense of the term could it be said that the residence abroad was dependant on anything but his own will, though it was likely enough that that will might have been materially influenced by his recall. It was generally understood that officers in the latter predicament did not acquire a legal domicil in the quarters to which they might be sent and in which they remained in the performance of their duty; but the principle of the exception was not that the Crown had the power to recall them, but the more important consideration that it had the power to send them there, and that they presumably were there only in obedience to that power. The inference drawn thence was supposed to be, that however long their mere corporeal residence might be in any particular place, the residence is to be ascribed not to any *animus* of theirs but to the *animus* of their military superiors, to which, so long as they continued in the profession, they were bound to yield obedience. There was consequently in such a case a complete separation between the mere *de facto* residence in a particular locality and the *animus* of betaking themselves to that locality, and continuing in it, which last was indispensable to the existence of a domicil in the legal sense of the term; but analogy naturally failed in the most essential particular, when it was attempted to be applied to officers on half-pay. The Crown had no power to determine where they should remove themselves to. In a very recent case of *The Attorney-General* v. *Napier*, 6 Exch. 217 (15th Feb. 1851), a British born subject, an officer on service in her Majesty's army in India, died there intestate, leaving all his property situate in that country, with the exception of a small debt due to him from the War Office in England. His widow took out letters of administration in India, and after paying his debts, &c., invested the rest of the estate in India in her own name for her own benefit and that of the next of kin. She afterwards took out administration in England for the purpose of getting the debt due from the War Office. The Crown then claimed legacy duty on all the property of the intestate in England and India; and it was held that as the deceased was on duty in India in her Majesty's service he did not acquire a domicil in that country, and that the whole of his property, though chiefly situate abroad, was liable to legacy duty. It was likewise held that an officer in the service of the East India Company did thereby acquire a domicil in India. This case, therefore, is a confirmation (if any were wanting) of the observations made by *Lord Fullerton* and *Lord Robertson* in the case immediately preceding, and the principles upon which they both proceed are too plain to need explanation. The following cases may likewise be referred to on the same

points: *Logan* v. *Fairlie*, 1 Myl. & Cr. 59; *Jackson* v. *Forbes*, 2 Cr. & Jer. 382; *Attorney-General* v. *Jackson*, 8 Bligh. N. S. 15; 2 Cl. & Fin. 148; *In Re Ewing*, 1 Cr. & Jer. 151; *Arnold* v. *Arnold*, 2 Myl. & Cr. 256. I have thus treated of the cases of a wife, and of a servant of the Crown, or of any great body having possessions or jurisdiction in a foreign country, such as the East India Company; for one instance is sufficient to evolve the principle.

With regard to the case of a minor or infant, that subject is so fully treated of in the next chapter, under the head "domicil of origin," that it would be but tautology to go into it at length here. I may, however, remark, that the condition of an infant in respect to his domicil, partakes of the character of all disabilities; he can have no legal *status* of his own, except that of origin, and as he is not responsible for any act which would make an adult liable (civilly speaking) unless he clearly adopts it when he has attained twenty-one, so he is dependent upon the *status* of his father for his domicil, and failing that, his origin is traceable to the country wherein he first draws breath—if on the high seas to that country to which the vessel belongs where he is born, and within cannon shot of the shore to that country off whose shore such vessel is lying, or in a port the limits would extend to the limits of such port.

The case of a domestic servant may be in some degree different from that of a servant of a public governing power, because the tenure is somewhat different. The ordinary tenure of domestics is, that both master and servant may separate from each other with one month's notice, although in the case of agricultural labourers it is understood that the hiring is for one year (see *Reg.* v. *Twenlow*, 4 W. R. 412; *Lowther* v. *Earl Radnor and Another*, 8 East. 113; referring to the 20 Geo. 2, c. 19 & 31, ibid. c. 11, s. 3). These Acts apply to all labourers generally The question of domicil upon this head can only arise where servants accompany their masters abroad, a very common case. Knowing the principles which govern the general law of domicil, it is only necessary to apply them to the case under consideration. Now, in every case where the will of the party is not an agent to determine the domicil, we must of necessity look at the power upon which they are dependent, and the domicil of that power becomes that of its subject or servant, and the only thing to refer to then is the duration and nature of the connection between them. As we have seen in the case before us, this is not certain for more than a year in one case, and may not last in the other except *de mense in mensem*. This, be it remembered, is where there are no assisting circumstances to help us in determining the question; for the same *animus* may reside in a servant as in an independent individual, and any expressions or acts forming an *animus* and *factum* would be sufficient, I apprehend, to override the rule of compulsory domicils. Thus, suppose a servant lives for a number of years in a family with whom he has gone to a foreign country, marries there, and has a home and family near the residence of his master, where he resides, only following his service at his master's house during the day, and having saved and possessing a competence, constantly declares his intention to leave the service whenever his master's family return to England, and to spend the remainder of his days at his chosen home. I think, upon such a state of circumstances, there would be little or no doubt, that if he died in the service his domicil would be in that foreign country, whether his master or mistress had acquired a domicil or not. On the other hand, a servant of an individual holding an office where the original domicil is not lost, in the ordinary course would follow such domicil; and the exception in this case, as in all others, proves the rule. The case of an apprentice can hardly apply to this question, because, generally speaking, he is a minor also; but supposing him of age, he has so little will in his movements that, whilst his indentures remain uncancelled, he must of necessity have the same domicil as his master. The determination of indentures otherwise than by cancellation involves a criminal question, and the apprentice would then come under another head of compulsory domicil, namely, that of a prisoner, of which hereafter. Our law is sadly bare of authorities on these heads, beyond what we find in the text books, and those generally the *dicta* of foreign writers. Thus *Voet*, art. 1, t. v. § 96, has the general proposition that servants follow the domicil of their masters, and the cases do no more than proceed upon the principles which govern the general law, and which I have endeavoured to apply at the outset of these observations. Thus in the case of *Dalhousie* v. *McDouall*, 7 Cl. & Fin. 331, 817, it was held that a servant who follows his master does not thereby lose his domicil of origin; cod. x. 40-7; Cod. Civile, art. 109. The fact is that a servant stands in a very different position to any other person under disability (if his case can indeed be classed with theirs, which is very doubtful) for he has the power, within a limited and time certain at least, to act as he pleases, in respect to his place of abode, whereas they *must* of necessity follow that of others, reside where they reside, and go where they go, moreover this even is not always necessary, for although for the time resident in another place, whether the domicil of their superior or not, their domicil and his still continues to be the same. Thus a slave can have no other domicil but that of his master whilst he continues in that relation to him. The best instance, perhaps, of compulsory domicil would be that of a prisoner, not because there is any doubt as to his domicil being that of the country in which he is imprisoned, but because he cannot leave it; and this element it is which determines his domicil. I speak now of an *entire* imprisonment, that is during the remainder of his days, for, in this case, the *animus* is taken away from him and transferred to that of the power holding him in durance, and the *factum* is represented by the place or locality in which he is imprisoned. *Primâ facie* a prisoner does not lose his domicil of origin merely by the fact of being incarcerated, for it may be, and generally is for a limited time; and it must be presumed that, as soon as the term is over he will avail himself of his freedom to act according to his own will and convenience, and either regain his original domicil or acquire another, as circumstances may render it expedient or necessary for him to do.

(To be Continued).

The Courts, Appointments, Promotions, Vacancies, &c.

COURT OF QUEEN'S BENCH.

(Sittings at Nisi Prius at Westminster, before Lord Chief Justice Cockburn, and a special jury.)

Feb. 13.—*Costerton* v. *Lacon*, Bart.—The plaintiff is a solicitor of Yarmouth, and brought this action against Sir Edmund Lacon for slander, contained in a speech which he had made at a public dinner at Yarmouth, reflecting upon the character of the plaintiff, as a member of the committee for conducting a petition against the return of the defendant to the House of Commons.

After the evidence for the plaintiff had been given, counsel on behalf of Sir E. Lacon said he withdrew any charge he had made against Mr. Costerton, and regretted having made them.

The plaintiff's counsel said the plaintiff would never have brought this action, had he not have been pointed at as a person who had been engaged in most discreditable acts. If he had not brought the action, it would have been professional ruin to him.

The Chief Justice said the result was highly creditable to

the defendant, but he considered the plaintiff was bound to bring the action.

Verdict for the plaintiff for 40s. damages.

COURT OF PROBATE.

(Before Sir C. CRESSWELL.)

Feb. 13.—*Winstone* v. *Winstone and Dyne.*—The wife in this case had presented a petition for judicial separation on the ground of cruelty. The husband had denied the cruelty, and charged the wife with adultery. The case was tried in February, 1860, and a verdict found for the husband on both issues. A petition for a dissolution of marriage by the husband, in which the same questions were raised, was tried in December last, and the husband again obtained a verdict on both issues, and a decree *nisi* was pronounced. An order for alimony *pendente lite* had been made in the judicial separation suit. Since the decree *nisi* in the second suit the wife had filed a petition for permanent alimony, alleging simply the amount of the husband's income.

Counsel for the husband moved that the petition for permanent alimony might be taken off the file. He submitted that such an application by a wife who had been proved to be guilty of adultery was unprecedented. But even if it were competent to the wife to make it under the 32d section of the Act of 1857, it ought to have been introduced in her answer in order that the husband might have had the opportunity of producing evidence on the trial of his petition, showing that her conduct had been such as to deprive her of a right to a permanent provision.

Counsel for the wife contended that the 32d section gave to the wife a right to apply for a permanent provision at any time before the decree finally dissolving the marriage was pronounced. It could not be necessary to introduce the prayer for alimony into the answer, because the court would not on the trial of the petition enter into the question of the husband's faculties.

His LORDSHIP took time to consider his decision.

In the course of his argument, counsel for the wife mentioned that an allegation of the husband's faculties was introduced into the petition in consequence of the information given at the registry as to the practice of the court in that respect.

His LORDSHIP repeated an observation which he has frequently made, that professional men ought not to go to the registry when they were at a loss upon a point of practice, and put questions to the clerks, who had other matters to attend to. They ought to to take the advice of counsel.

WORSHIP-STREET POLICE-COURT.

Feb. 12.—John Robinson Gibson, 46 years of age, stated to be a solicitor residing at Edmonton, was charged with embezzlement.

Evidence having been given of the prisoner's non-accounting for £60 11s. and £31 5s. received by him on account of the Eastern Counties Railway Company on the 6th of September, 1860, and £31 5s. on the 7th of December in the same year, a remand was asked for to prove further defalcations.

Superintendent Kent, attached to the railway in question, said,—When I took the prisoner this morning at the Shoreditch station he said in reference to the charge, "I've received the amounts, but not with any felonious intent. I shall not give any trouble. I am guilty."

A remand being applied for, and the prisoner expressing no desire to be admitted to bail, he was remanded accordingly.

Mr. Norton, one of the Masters of the Queen's Bench, has been appointed to the office of Queen's Coroner, and attorney in the place of the late Mr. Corner, Mr. J. G. Malcolm, of the Home Circuit, will succeed Mr. Norton as Master. The office of assistant master of the Crown Office has been abolished.

Mr. Francis Impey, of No. 12, Bedford-row, Middlesex, has been appointed a commissioner to administer oaths in the Courts of Queen's Bench, Common Pleas, and Exchequer.

The Queen has been graciously pleased to grant unto John Fortescue Brickdale, of Newland, Gloucester, and West Monckton, Somerset, Esquire, Barrister-at-law, her royal licence and authority that he may, as one of the co-heirs of John Dicker Inglett Fortescue, of Buckland Filleigh, Devon, Esquire, deceased, take and use the surname of Fortescue, in addition to and before that of Brickdale, and also bear the arms of Fortescue quarterly with those of Brickdale.

Parliament and Legislation.

HOUSE OF LORDS.

Monday, Feb. 11.

STATUTE LAW CONSOLIDATION.

The LORD CHANCELLOR laid on the table a Bill for clearing the statute book of a mass of useless matter, which, he said, was a preliminary stage in the ground work of the consolidation of the statute law. The Bill had been carefully drawn by Messrs. Reilly and Wood. It had been circulated during the recess to all the public offices, and the answers received from them in reply to questions put concerning the Bill shewed that it would require but very slight amendment.

The Bill was read a first time.

INDICTABLE OFFENCES (METROPOLITAN DISTRICT) BILL.

This Bill was read a second time.

In reply to a question from Lord Cranworth, Lord Chelmsford said that this was the same measure as that introduced into the House last session.

Tuesday, Feb. 12.

FORGED TRADE MARKS.

The LORD CHANCELLOR laid on the table a Bill for the protection of manufacturers against forged trade marks. The Bill proposed that the forging of trade marks, or the sale of articles bearing forged marks, with intent to defraud, and the using of marks falsely describing the quantity and quality of goods should be made misdemeanours punishable by fine and imprisonment. If the name or monogram of any particular artist were fraudulently attached to any work of art, that would be a misdemeanour and punishable in like manner.

Thursday, Feb. 14.

THE ADMIRALTY COURT.

The LORD CHANCELLOR laid on the table a Bill relating to the Admiralty Court, the object of which is to abolish the right of appeal from the Admiralty Court to the Judicial Committee of the Privy Council.

Friday, Feb. 15.

THE COURTS OF CHANCERY.

Lord ST. LEONARDS rose, to quote the words of his motion, "to draw the attention of the House to the report of the Commissioners of Inquiry as to the expediency of building new law courts on the same spot, and where the money was to come from, with a view of preserving the funds arising from the investment of monies belonging to the suitors of the Court of Chancery for their benefit and security; for which purpose the monies were laid out subject to certain charges, and for the reducing of fees payable to the Court by such suitor, for which object the funds stand appropriated."

(Left speaking).

HOUSE OF COMMONS.

Monday, Feb. 11.

LOCAL TAXATION AND GOVERNMENT OF THE CITY OF LONDON.

Mr. AYRTON intimated that on Friday week he would move for a select committee to inquire into the local taxation and government of the city of London, and the expediency of constituting the metropolis a county in itself for the administration of justice and management of its own affairs.

BANKRUPTCY AND INSOLVENCY.

The ATTORNEY-GENERAL moved for leave to bring in a Bill to amend the law relating to bankruptcy and insolvency. This was only an amending Bill. One of the great evils it was necessary to remedy was the confusion that exists in bankruptcy between the judicial and administrative functions of the Court. The charges on the administration of an estate in bankruptcy amounted to 33 per cent. He proposed to appoint a chief judge of the Court of Bankruptcy, and to continue the five London Commissioners. The Bill would abolish the Insolvent Court and leave the administration of justice both in bankruptcy and insolvency, in the London district, in one and the same Court. That district was very

extensive, stretching from the extremity of Norfolk on the one side to the borders of Hampshire on the other. Another part of the Bill proposed to augment the jurisdiction of the county courts, and to give creditors the power of removing an estate from the Court of Bankruptcy to the county court without any limit in point of amount, and that all petitions for removing bankruptcy should be presented in the first instance to the Court of Bankruptcy, except in those cases where the debts of the trader do not exceed £300. These changes were the most material changes made by the Bill, and were all the differences that exist on this part of the subject between the Bill of last session and the present. He then explained the course of procedure proposed by the Bill. One great object was to enable a bankrupt's estate to be administered and worked out without going into bankruptcy at all. He then described the powers and functions with which he proposed to clothe the creditors, and official assignees, and the nature of the discharge to be given to the debtor. The Bill abolished the distinction of the certificates to be given to bankrupts. The Bill described instances of misconduct which should warrant the judge in refusing or suspending the order of discharge or of committing the bankrupt to prison for any period of time not exceeding one year. Among the offences so enumerated was the acquiring of fictitious capital, and the trading with false capital, principally produced by the excessive and unjust application of accommodation bills. The chief judge is to have power to try bankrupts for criminal offences; but if the bankrupt desires it he may be tried by a jury. No appeal is allowed to any other tribunal. This procedure applied to trader debtors. With respect to non-traders he enumerated the following tests of bankruptcy,—absconding from the country with the intent of evading creditors, a creditor being unable to find the debtor to enforce a judgment obtained by the ordinary process of law, and the debtor being arrested on final process and placed in prison. After-acquired property of non-traders should not be liable to debts due at the time of his insolvency. He explained the other details of the Bill, and in conclusion expressed his expectation that the portion of it which provided for private arrangements by means of deeds of composition would be found most beneficial, ensuring economy and expedition.

Mr. Hadfield, Mr. Malins, and Mr. Crawford, expressed their concurrence in the measure; and it was commended by Mr. Walpole and other members.

Leave was given to introduce the Bill.

BANKRUPTCY COURT.

On the motion of Mr. MURRAY, returns were ordered of the revenue and expenditure, balances, and the number of sittings of the Court of Bankruptcy for the year 1860.

LAW OF LUNACY.

Sir G. C. LEWIS (in answer to Mr. Walpole) said that a Bill to amend the law of lunacy was in preparation, and he hoped to bring it in on an early day. He might also state that the Lord Chancellor intended to bring in a Bill on the subject of Chancery lunatics, which would be a separate measure.

Tuesday, Feb. 12.

DISQUALIFIED WITNESSES.

Sir JOHN TRELAWNY asked the Secretary of State for the Home Department whether he had been informed of a recent decision in the County Court at Rochdale by the judge, Mr. C. Temple, who is alleged to have nonsuited a plaintiff on account of the inability of the witness to affirm her belief in a future state of rewards and punishments; and whether, on the assumption that the judge ruled properly, the Government would deem it necessary to amend the law applicable to similar cases.

Sir G. C. LEWIS: In consequence of the notice given by the hon. baronet, I have been able to communicate with the judge who tried the case referred to. It was a case of *Maden* v. *Catenach*.* The law is not at all narrow or intolerant with respect to the administration of an oath, because it permits the administration of any oath which is binding according to the religious belief of a witness; so that a Mussulman, a Hindoo, or a Chinese may be sworn according to the ceremonies which are binding upon his conscience, but which, nevertheless, all presume the existence of some religious belief. The only instance in which an oath is dispensed with is in the case of members of the Society of Friends, who are by a special Act of Parliament allowed to make a declaration which implies a religious belief, in lieu of an oath. That being the state of the law I can only say that it is not my intention to ask for leave to introduce any Bill to alter it.

Wednesday, Feb. 13.

NEW MEMBER.

Mr. W. E. FORSTER took the oaths and his seat for Bradford.

Thursday, Feb. 14.

BANKRUPTCY AND INSOLVENCY BILL.

On the motion for the second reading of this Bill,

Mr. ROEBUCK objected to the Bill. The Bill was a complete failure. What could the chief judge, whom it was proposed to appoint, do, that was not already done by the Lords Justices? It was not proposed to diminish the fees now payable. The distinction between bankruptcy and insolvency was not done away with, for an act of bankruptcy on the part of a trader was not an act of bankruptcy on the part of a non-trader, and thus the distinction was preserved in spite of the Bill.

Mr. BOVILL said it was a matter for serious consideration whether the House would appoint a new chief judge at a salary of £5,000 a-year, in place of a tribunal which now worked well. By the Bill of last year it was proposed to abolish the messengers of the court. It was now intended to retain them at salaries not exceeding £500 a-year. While ready to admit the many excellent provisions of the Bill, he was not satisfied with it, and thought it was not such a one as the country had a right to expect.

Mr. LYSLEY said with respect to the appointment of a chief judge, that 19-20ths of bankruptcy business arose out of the collection and distribution of the estate, and suggested that the functions of the chief judge should be increased by giving him a general supervision over the administrative business of bankruptcy.

Mr. MOFFAT, Mr. J. C. EWART, and Mr. HADFIELD supported the measure.

The ATTORNEY-GENERAL replied.

The Bill was then read a second time, and ordered to be committed on Monday next.

CRIMINAL LAW CONSOLIDATION (ENGLAND AND IRELAND).

The SOLICITOR-GENERAL moved for leave to introduce a series of seven Bills to consolidate and amend the statute law of England and Ireland relating to criminal offences.

Leave given.

LAW OF FOREIGN COUNTRIES.

Mr. DUNLOP moved for leave bring in a Bill to afford facilities for the better ascertainment of the law of foreign countries when pleaded in courts within her Majesty's dominions.

The Bill was read a first time.

PENDING MEASURES OF LEGISLATION.

QUALIFICATION FOR OFFICES BILL.

This Bill proposes that it shall not be obligatory on any one hereafter chosen mayor, alderman, common-councilman, &c., or to any office or magistracy relating to the government of any county or corporation of England, or "for any person who shall hereafter be admitted into any office or employment," or who shall accept any grant or commission from the Crown, to make and subscribe the declaration required by the Act of 1828 (repealing the Test and Corporation Acts), that he will not exercise the power, authority, or influence of his office to injure or weaken the Established Church, or to disturb that Church or its bishops and clergy in the possession of the rights and privileges to which they are by law entitled.

Recent Decisions.

EQUITY.

PRACTICE—AGENT—INSPECTION OF DOCUMENTS.

Draper v. *The Manchester &c., Railway Company*, L. L. J., 9 W. R. 215.

It was held in this case that under the common order for inspection of documents in a cause by the plaintiff, his solicitor and agent, the plaintiff could not appoint as his agent for the

* The facts of this case are stated ante p. 222.

purpose of inspection, a professional accountant to whom the defendants, *a railway company*, objected on the ground that he was connected with a rival company. Lord Justice Turner, having observed that the words "solicitors and agents" had for some years received a limited construction, said that "it might not be necessary that an agent for the purpose of inspection must of necessity be a legal agent, but his lordship thought that he must be a general agent, and not an agent appointed for the special purposes of the case." The general practice no doubt has been to consider an order for inspection to be restricted to the party obtaining it and his solicitor and agent in the cause. There appears to be some doubt, however, whether it may not, where the case requires it, include a special agent to whom no objection could be made by the other side. In the present case there was a valid objection to the special agent, and therefore it was not necessary to decide the point generally.

PRACTICE—23 & 24 VICT. c. 127, s. 28.

Bonser v. *Bradshaw*, V. C. S., 9 W. R. 229.

This section enables Courts before whom any suit, matter, or proceeding has been heard or is depending, to declare the attorney or solicitor employed therein to be entitled to a charge for his costs upon the property recovered or preserved, upon which declaration the attorney or solicitor is to have a charge upon such property, and all conveyances to defeat the same, except to *bonâ fide* purchasers for value without notice, are to be void as against such charge.

In this case Sir J. Stuart, V.C., intimated an opinion that the section to which we have referred applies only to the case of a solicitor claiming his costs against the estate of an adult client. His Honour, however, does not appear to have stated any ground for this dictum, and it is not easy to discover in the enactment itself, any reason why it should be limited in the manner suggested. The words of the section are very large, and certainly include every "suit, matter, or proceeding in any court of justice," whether infants or any other class of persons not *sui juris* are parties, the Legislature having confided to the judge the discretion to decide in each case, whether the solicitor shall or shall not have the statutory charge upon the property recovered or preserved.

The Court of Queen's Bench in a recent case (*Ex parte Thompson*) has also come to a decision which will have the effect of limiting the application of this enactment in a manner, however, which appears consistent, and, indeed, required by its terms, and which is also reasonable in itself. The Court of Queen's Bench in this case held that the 28th section applies only to the costs of the particular suit or action in which the estate was recovered. The words of the section are that the solicitor is to have a charge "for the taxed costs, charges, and expenses of or *in reference to* such suit, matter, or proceeding." The words in italics, however, would doubtless be wide and general enough to include in some cases preliminary proceedings or attempts to accomplish without suit what afterwards required litigation to achieve.

Now that we have touched upon this section we may invite the attention of those of our readers who are particularly engaged in transactions between vendors and purchasers to the importance of the provision which makes the solicitors' charge in such cases indefeasible except by a purchaser for valuable consideration without notice. It will be necessary for purchasers where it appears that the property may have been *recovered or preserved*, to be satisfied that no charge under this section is in existence; for, no doubt, should the purchaser have information of the fact of any suit, matter, or proceeding, in which the property might have been recovered or preserved, he would be considered to have constructive notice under the provisions of this section, of the solicitor's charge, if such existed. Mortgagees, moreover, not being expressly named in the exception, it is doubtful whether it would be held that they would have the advantage of the exception in favour of purchasers for value.

REAL PROPERTY AND CONVEYANCING.

GAVELKIND—DOWER ACT.

Farley v. *Bonham*, V. C. W., 9 W. R. 299.

It has been here decided that gavelkind lands are subject to the provisions of the Dower Act. The lands were in Kent, and it was an established part of the old law that by the custom of Kent, the wife, after the death of her husband, should have for her dower *a moiety* of all his lands and tenements of the nature of gavelkind; Robinson on Gavelkind, 3rd ed. 205. The Dower Act, by the interpretation clause, enacts that "land" is to extend to manors, advowsons, and all other hereditaments, whether corporeal or incorporeal (except such as are not liable to dower). The simple question was, whether lands of the nature of gavelkind were comprised within these words? The language at first sight seems to be of the most comprehensive description, and to exclude all argument. It was argued, however, that the Real Property Commissioners, in their first report, had declared (pp. 16 & 19) that "they did not propose at present to extend the alterations of the law of dower to gavelkind lands, or borough-English lands, or to copyhold or customary lands, as to all which the right of dower or freebench was regulated by a variety of peculiar customs;" the inference being that such, also, was the intention of the Legislature. Further, that it had been held that the Act did not apply to copyholds; *Smith* v. *Adams*, 5 De G. M. & G. 712; *Powdrell* v. *Jones*, 2 Sm. & Giff. 415, in which case Stuart, V.C., observed, "The language of the statute itself shows that it refers only to estates which pass by deed and not by surrender, and the opinion of Lord St. Leonards is repeatedly expressed that copyholds are not within that statute." The observation was also made as against the operation of the statute that the words "of any tenure," which occur in the Fines and Recoveries Act, are omitted, as if purposely, from the Dower Act, though nearly of contemporaneous date, and it was contended that the latter Act contemplates dower at common law only, as distinguished from customary dower. Decisions on the Disgavelling Act, 31 Hen. 8, c. 3, show that that statute extended to no other custom of the land, save that of descent; Robinson, 3rd Ed. p. 97, and it was a principle of construction that general words in an Act of Parliament are not to be construed so as to alter the previous policy of the law, unless no sense or meaning can be applied to those words consistently with the intention of preserving the existing policy untouched; *Minet* v. *Leman*, 20 Beav. 269. These arguments were overruled by the Vice-Chancellor Wood. He showed that the policy of this Act, as stated in the report of the Commissioners, was to remedy the previous uncertainty in the system of law, and in the deduction of titles, owing to subtle refinements in the law of dower; and that the right of dower was of very trifling benefit to the widow, and often injurious to her, by involving her in litigation. These evils were met by giving the wife dower in all real property, whether real or equitable, where the husband had not clearly defeated her right by declaration. There was no contrast in the Act between customary dowers and dower at common law; the inconsistency, now rectified, was between legal and equitable estates. The decision that copyholds were not included in the Dower Act and the remarks of Vice-Chancellor Stuart, were founded probably on the circumstance, that generally, in the case of copyholds, the husband's disposition controlled the right to freebench. This reason could not apply to gavelkind land. The omission of the words "of any tenure," could not have the effect of limiting the large operation of the word "land." Moreover, the evils proposed to be remedied by the Act extended to gavelkind as well as to other lands. As to the Disgavelling Act of 31 Hen. 8, it was observed that that statute was passed on the petition of certain landowners in Kent, and the design of the Legislature was, not that the land should be divested of any of its former privileges in the case of forfeiture for felony and the like, but simply that it should be rendered partible. The Dower Act, on the other hand, was a measure founded on public policy. Upon the question of the construction of the statute, the Vice-Chancellor agreed with the observations of the Master of the Rolls, in *Minet* v. *Leman*, and after pointing out that the policy of the Act had direct reference to gavelkind lands, asked what there was to show that the proposed alteration in the law would be other than was intended, if the provisions of the new Act were extended to lands of this tenure. The customary right to dower was quite as strong as the common law right; there was nothing in the word "dower" to indicate a subject matter different from the general subject matter of the Act, and this was a case where the abrogation of a custom would benefit both husband and widow, and persons claiming as purchasers from them both. The conclusion was, that on every ground the widow was entitled to dower.

COMMON LAW.

COUNTY AND BOROUGH QUARTER SESSIONS—APPEAL, COSTS OF—8 & 9 WILL. 3, c. 30.

Reg. v. *Recorder of Leeds*, Q. B., 9 W. R. 270.

This was an appeal from the decision of a recorder, with regard to the costs of an appeal to the borough quarter sessions,

under the following circumstances. Two justices of the borough of L. had made an order for the removal of a pauper to the township of B., against which order the parish officers of B. gave notice of appeal, stating to the overseers of L. their intention to appeal to the county sessions of the district within which the borough was situate. Previously, however, to the county quarter sessions being held, and before, also, the time of holding the borough quarter sessions (which had been fixed for a few days earlier than the sessions for the county), the appellants discovered that the appeal should properly have been to the borough sessions; and they then asked the respondents to try the appeal at the county sessions by consent—saying, at the same time, that if the respondents declined to accede to that proposal, the appeal of which notice had been given, must be considered as abandoned. The respondents refused to accede to the proposal made by the appellants, as jurisdiction could not be given by consent in the case of appeals against removal orders. They afterwards applied to the borough quarter sessions for the costs they had incurred in relation to the abandoned appeal, under 8 & 9 Will. 3, c. 30, s. 3. This provision is to the effect that the *county* magistrates in their general or quarter sessions, upon any appeal before them there had concerning the settlement of a pauper, or upon proof there made of notice of appeal to the churchwardens or overseers of any place, though such appeal be not afterwards prosecuted, may at the same sessions award to the party in whose behalf the appeal shall be determined, or to whom notice of appeal shall have been given, their "reasonable costs and charges." It will be observed that this enactment, in its terms, applies only to *county* sessions and allows costs of appeal to be awarded there; whereas in the present case the application for costs was made to, and granted by, the *borough* quarter sessions. This difficulty, however, is probably removed by the general enactment in 5 & 6 W. 4, c. 76, s. 105, giving the recorder of a borough in his court of quarter sessions of the peace, cognizance of "all matters whatever" (with certain exceptions mentioned in the same Act) which are cognizable by any county quarter sessions: and further providing that he shall have power to do all things necessary for exercising such jurisdiction, notwithstanding his being sole judge. These general words seem to be sufficient to give a recorder jurisdiction over the costs of an appeal; but the point does not appear in the present case to have been brought before the Court of Queen's Bench—the question for their decision rather being whether the respondents were justified in treating the notice of appeal as a good one for the next borough sessions; in reference to which, alone, it had a legal application, however it might be worded. The Court were of opinion that they were justified in so treating it, and that consequently the recorder had jurisdiction to make an order for the costs of the abandoned appeal. This conclusion was chiefly come to on the authority of *Reg.* v. *Recorder of Liverpool* (15 Q. B. 1070). There the appellants made the same mistake, but discovering their error before anything was done, and having thereupon informed the other side (without any fresh notice), that the appeal was to be to the *borough* sessions, it was held that such notice enured as a valid notice of appeal for the borough sessions; and the recorder (who had entertained a different opinion, and had dismissed the appeal for want of due notice thereof having been given), was compelled by mandamus to hear the appeal notwithstanding.

MASTERS AND WORKMEN—CONSPIRACY—6 GEO. 4, c. 129, s. 3.

Walsby, app., v. *Anley, resp.*, Q. B., 9 W. R., 271.

This is another decision upon the provisions in 6 Geo. 4, c. 129, prohibitory of conspiracies by workmen to obtain terms from their employers by intimidation and other improper practices. The law upon this important subject, so far as it was required by the case then before the Court, was luminously expounded by the Chief Justice of the Queen's Bench to the following effect. Every workman is free to quit his master when he will if he be not bound by any contract to remain any specified time; and he may also tell his master that he will quit his service unless A. or B be discharged. And not only a *single* workman may lawfully make such an announcement, but several may also make it each for himself. But beyond this workmen cannot go. They may not proceed in a body to their employer, and endeavour to coerce him by a threat that they will leave all together unless A. and B. be discharged. Such combination makes their conduct amount to a conspiracy at common law; and, moreover, seems to come within the 3rd section of the Act, which (among other things) makes it criminal for any person, by "threats or intimidation," to force, or endeavour to force, any person carrying on any trade or business, to limit the number or description of his workmen.

With regard to the distinction above taken by the Chief Justice, it may be remarked that it lies at the very foundation of the law of conspiracies—for a purpose is often criminal when concerted by several, which would not be of that character if entertained merely by an individual. And the reason given in the books is, that though every wrong may not be of a dangerous character to the public (which wrongs alone are punished by the criminal law), yet every *coalition* to promote wrong is clearly of that character.

ATTORNEY AND CLIENT—WHAT IS MAINTENANCE.

Earle v. *Hopwood*, C. P., 9 W. R. 272.

The offence of *maintenance* is punishable with fine and imprisonment by statutes still unrepealed; though in modern times it is chiefly heard of in connection with some contract which is sought to be set aside, on the ground that the consideration for it is illegal, as amounting to this offence. As to what maintenance is, we find one species of it defined as "an officious intermeddling in a suit that no way belongs to one by maintaining or assisting either party with money or otherwise to prosecute or defend it." This species of the offence is termed *curialis*, and if in addition the party maintaining stipulates to have part of the thing in suit, the offence is then known as *champerty* (1 Russ. on Crimes, p. 175). It is, however, to be remarked that there are many acts in the nature of maintenance which become justifiable from the circumstances under which they are done—and one instance is, when they are done by a barrister or attorney in the legitimate exercise of his profession. As to this, however, there are some nice distinctions, according to which the conduct of the party is justifiable or ranges itself under this offence. Thus, it is said that an attorney (but only when *specially* retained) may lawfully prosecute or defend an action for his client, and lay out his own money in the suit (Russ. *ubi sup.*), but this must not be coupled with an agreement to receive part of what is recovered; and the present case shows that neither can he so lay out his money, on the understanding that whether he is to receive remuneration at all is to depend upon the success of the action, and that the amount of his remuneration (if any) is to be proportionate to the value of what is recovered. A declaration framed on such an agreement, was demurred to as being bad in substance; and an unanimous judgment against it was given by the Court of Common Pleas, without even calling upon the defendant to support the demurrer.

Correspondence.

LORD CRANWORTH'S MORTGAGEES' ACT.

What would you do in this case? A client of mine has agreed to borrow £500 of another person upon security of a mortgage of certain freehold property, and as every pound of expense is matter of consideration, I propose to the mortgagee's solicitor to give a mortgage framed under the above Act of last session, so as to keep the deed as short and the expense as low as possible. The mortgagee's solicitor, however, declines to draw it under this Act, and proposes to draw it in the old full length style, with usual powers of sale, insurance covenants, covenants for title, &c., and to exclude the operation of the Act under the section enabling parties to do so. I know of no reason for this, except that it may make a difference of £5 in the costs of drawing, fair copy, engrossing, parchment, and stamps, which my client will have to pay. Is there any remedy for this, or what would a court of equity decide upon such a point in a case like this of an open contract, or in fact no contract at all except a verbal one! It appears to me to be matter of some professional practical importance, and it suggests the question whether or not in future agreements or memoranda of deposit of deeds by way of equitable mortgage, a clause ought to be inserted providing that any mortgage to be prepared in pursuance thereof should be drawn under or with reference to the above Act. Most banks, for instance, keep printed forms of agreements by way of equitable mortgage for use by their customers who may deposit deeds as a security for advances. In such cases I apprehend the bank solicitors will, until a contrary practice is established or decided, claim *stare super antiquas vias* in drawing mortgages thereunder. I should like to ascertain the general professional opinion on this matter.

Feb. 11. A PROVINCIAL SOLICITOR.

"CHANCERY CHAMBERS." APPLICATIONS UNDER THE DEFENCE ACT.

Sir,—I observe in recent numbers of your publication (*ante*, pp. 195 & 233) you have advocated the extension of procedure by summons at chambers to applications relating to money paid into court under the Lands Clauses Consolidation Act. I beg to direct your attention to a provision for this very purpose in relation to money paid in under "The Defence Act, 1860" (23 & 24 Vic., c. 112) contained in sect. 23 of that Act. I have not observed that you referred to this enactment, and therefore infer that it has escaped your notice or your memory.

Old-square, Lincoln's-inn, Feb. 8. A. J. Wood.

MEMBER OF PARLIAMENT—HIGH SHERIFF.

Sir,—Can a member of Parliament for a county be legally appointed High Sheriff of the same county? Please reply in your next paper.

Yours very obty,

Carlisle, 13 Feb. 1861. Daniel M'Alpin.

The Provinces.

Wetherby.—*Informer: how for a competent witness.—Jackson* v. *Knowles.*—This case was heard before the borough magistrates on the 7th instant. It was an information preferred under the 3 & 4 Vict. c. 85, against the defendant, for compelling a young person under the age of 21 to ascend a chimney for the purpose of sweeping it. Mr. Granger, for the prosecution, proposed to examine the informer as a witness, to which Mr. Bruce, for the defendant, objected, on the ground that he had a pecuniary interest in the result of the information; under 3 & 4 Vict. c. 85, s. 7, which gives half the penalty to the informer. In support of the objection he cited 11 & 12 Vict. c. 43, s. 15, which enacts that every prosecutor of any information not having any pecuniary interest in the result of the same shall be a competent witness to support such information, and also Arnold's "Duties of a Justice out of Sessions," p. 22, where that enactment is treated as still subsisting unrepealed. The magistrates allowed the objection. [We may mention that Mr. Oke, in the last edition of his "Magisterial Synopsis," pp. 63 and 143, lays it down that so much of the 11 & 12 Vict. c. 43, s. 15, as prohibits an interested informer from being a witness is repealed by 14 & 15 Vict. c. 99, s. 2; and that the informer is now in all cases a competent witness. It appears strange that upon a question which must arise repeatedly there should be such a difference of opinion between two very eminent authorities—one of them administering justice law in the City and the other in Westminster, and both publishing their treatises in 1860.—Ed. *S. J.*]

Ireland.

Mr. John Pitt Kennedy has been appointed Crown prosecutor for the county of Tyrone, vacant by the death of Mr. Leatham, Recorder of Londonderry.

Mr. Serjeant Sullivan has been appointed law adviser to the Castle, in the place of Mr. Lawson, Q.C., the new Solicitor-General. It is stated that Mr. A. S. Mehan has been appointed Recorder of Londonderry in the room of the late Mr. W. P. Leatham.

Review.

The Law of Debtor and Creditor. By Charles Francis Trower, M.A., Barrister-at-law. Stevens; Sweet; Maxwell. 1860.

A treatise upon the law of debtor and creditor has been a desideratum to the legal public these many years. The book before us professes, not without reason, to be a compendium of the law upon this extensive class of legal relations, and to dispense with the hitherto necessary references both to the equity and law shelves of a library, for information upon questions of debt and credit. The law of debtor and creditor is, in one sense, obviously co-extensive with the entire sphere of contracts. A debt, indeed, cannot properly be said to be created as long as the contract from which it may arise is *in fieri*, and not actually completed. Nevertheless, in all cases of contract a certain liability is incurred by at least one of the contracting parties. The terms debtor and creditor, however, are generally used both in colloquial and legal phraseology, in reference to that class of obligations in which a certain ascertained sum of money is due from one of the contracting parties to the other—as distinguished from those cases of assumpsit, covenant, or tort, in which the amount of the liability is unascertained. A treatise, then, on the law of debtor and creditor suggests to us by its terms that it describes the results rather than the origin or nature of contracts. We should expect to find in such a book the principles of pleading, practice, and evidence, in relation to debts; their enforcement, release, or liquidation; but not an examination of the law of contracts; or, if such a treatise alluded to the conditions and circumstances of legal contracts, we should at all events expect mention of those species only which arise merely out of the relative status of the parties, independently of any collateral securities, such as mortgages, pledges, or liens, for the enforcement of the debt, or the performance of the contract.

Mr. Trower states his design to be, "by avoiding, as far as possible, everything *which is not law at the present moment*; by stating the results of decisions rather than their reasons; and by aiming at condensation of expression as well as of matter; to compress a practical treatise upon the entire subject into a single volume." The chief cause, he adds, which has deterred text writers from a task like his, appears to be "the risk of perpetual legislative changes." The extent over which a comprehensive treatise, such as the book before us, travels, is, on the other hand, a counterpoise to this legislative obstruction to the vitality of an author's fame, inasmuch as a great portion of the existing law of contracts must continue unaffected by a legislation which is studiously partial and incomplete. Mr. Trower notices Lord St. Leonards' Act to further amend the Law of Property, passed in the last session, as a specimen of this piecemeal method of law reform, and considers that the claims of creditors have been unduly depreciated in a zeal bestowed upon the interests of purchasers exclusively. With this view we entirely concur, and we are happy to find our opinion upon this point corroborated by Mr. Trower. The first three chapters of his book relate to judgments, and are a complete abridgement of the laws relating to this class of debts. The consolidation of the statute law, "its administration by one set of courts, animated by the same principles, and regulated by the same procedure, together with an authoritative declaration of Parliament as to the conflicting decisions of our 'case' law," are the remedies suggested by Mr. Trower for the weighty and manifold burdens under which the legal public of this empire labours. These are, no doubt, desiderata; but are also likely to continue so. The disuse of ceremonies, such as sealing documents in cases of contracts, would tend, as we endeavour to show in our present number, to remove very many of the intricacies of that branch of law with which we are just now more immediately concerned.

The law of debtor and creditor does not admit so easily of a scientific exposition as many other equally or more complicated branches of law. The laws of real property, for instance, are characterized by the regard for tenure and seigneurial rights which their feudal origin impressed upon them. This characteristic of tenure runs through our whole real property system, and whenever it conflicts with the claims of creditors, these, unless protected by statute, are ignored. We have no similar pervading principle in the law of personal property. Smith's lectures on contracts is a work as scientifically constructed perhaps as an elementary outline on the subject could be. Yet, surely, the philosophy of the law of contracts in general, or even of the law of debtor and creditor, which is less extensive than that of contracts, whereof it forms only a part, must have an intimate connexion with the first principles of juridical science. The subject at the present time has any especial interest, owing to the Bankruptcy and Insolvency Bill, which is a remanet of the last session that is likely immediately to become law in some shape. This view of the question, however, is too ephemeral to be had in view in a treatise which naturally seeks more enduring bases. Mr. Trower does not enter upon the juristical relations of debtor and creditor, but, as a plain lawyer, states what the law is, not what it ought to be.

His division of the subject is simple, and violates no logical rule. The treatise is divided into two parts, the first of which comprises judgment, specialty, and simple contract debts, as between subjects; the second, mortgage

debts, annuities, and Crown debts. The principle of this division appears to be the distinction between debts strictly as such, and debts secured by being specifically charged on property. He says, in some cases, indeed, the result of a debt "follows so simultaneously upon the contract as to be hardly distinguishable from it. Thus, in the case of goods sold and paid for over the counter, the debt and contract seem contemporaneous." It has been well, we think, for Mr. Trower that he confined the scope of his treatise to statement but little diversified with metaphysical disquisitions. A purchase of goods has nothing akin to a debt. All debts are contracts or the results of contract; but all contracts are not cases of debt. The terms debt and contract are not synonymous in our law, although they are in the law of France. These terms differ in our use of them, as a part differs from the whole; a debt being a contract merely to pay a certain specified sum of money: sales and purchases in themselves, and as distinct from corroborative stipulations, being simply nothing more than commercial exchanges, of the circumstances attending which political economy or social science may take cognizance; but such transactions have no legal significance. Mr. Trower adopts the usual threefold division of debts—by judgment, by specialty, and by simple contract. He then considers these three classes of debts in two periods of time—as they confer rights during the life of the debtor, and as they confer rights after his death. A consideration of the relative status of debtor and creditor, and of the remedies upon contracts, opens up a sufficiently wide field for a comprehensive survey. Mr. Trower's book, however, treats not only of the relations of debtor and creditor according as these are defined by the character and form of the contract, but also contains much learning that is usually considered as appropriated to works on equity or real property. He states in an able but concise manner the law relating to the especial province of his treatise; and incidentally to this, he gives succinctly the law of marital rights, coverture, infancy, and legal incapacity. The third chapter of the first part of his book contains a neat summary of the law of partnerships and public companies. The second chapter of the second part contains a tabular statement of the parties necessary in suits after the death of the debtor. The chapters on mortgages are very concise abridgments of the law of these securities. The parts relating to judgments, assets, rent, and clubs, also deserve notice. Mr. Trower expresses himself with somewhat of indignation upon the present state of the laws relating to joint stock companies. This is a branch of law, however, which does not admit of an easy consolidation, inasmuch as the intricacies naturally inherent in such a complication of rights cannot be removed by legislation. Although mercantile law does not differ in principle from the laws relating to contracts generally, yet, owing to the numerous parties that are frequently concerned in a common mercantile undertaking, and bound by the same contract, mercantile law has become so varied in its details as to be deemed on the Continent a distinct province of law, and even in England to possess almost specific peculiarities. It is not, then, a province the most promising for law reformers. An appendix of sixty pages is given, containing a tabular view of all the Courts in England and Wales for the recovery of debts. It specifies the nature of the jurisdiction and the procedure of each court, and states many other interesting and important particulars.

Mr. Trower sometimes diverges from his prescribed course not by offering original suggestions, but by treating of matters such as donations *mortis causa*, which are only connected with the question of debts in the same manner that the national debt is—as lessening the fund of the subject for paying his debts. Mr. Trower offers no philosophic ideas upon the subject of his treatise. It is a bare compilation; but, we must add, that the province of his labours is certainly one not giving easy access to the philosophic exponent. He condenses much matter sometimes, indeed, in a phraseology inelegant; but he is at all times fluent in expression, and never leaves his statement of the law, which he is describing, incomplete. His work may be considered a handbook of many branches of law, and we confidently recommend it to the favourable notice of the legal public.

A deputation of Lancashire magistrates had an interview with Sir G. C. Lewis at the Home-Office on the 12th inst., on the subject of the expenses of criminal prosecutions, and the scale of allowances to witnesses at sessions and assizes, and on the effects of the inadequacy of such allowances in aiding the escape of criminals and checking the prevention of crime.

Obituary.

OWEN OWENS, Esq.

Mr. Owen Owens was a solicitor of Holyhead, and departed this life at the latter end of last month. By his talent and perseverance he had risen from an humble position to very great eminence in the legal profession. As a lawyer, he was of strict integrity, and faithful to his clients. He stood in the first rank as a session pleader, and enjoyed the highest confidence of the magistracy, as well as his professional brethren. His practice for a long period had been a very lucrative one, and he always discharged his professional duties with unsullied fame. He was a gentleman of sound general knowledge. His clients always spoke highly of him as one who never incited to litigation, but would rather appease hostilities, and advise an amicable settlement, if at all practicable. His funeral took place on the 1st inst., and so greatly was he respected that hundreds of persons of all grades and positions in life paid their last tribute to his memory by being present.

HINTS TO ARTICLED CLERKS.

No. I.

We propose to devote a few columns of the *Solicitors' Journal* to some hints to those who are still *in statu pupillari*, upon the best mode of conducting their studies and regulating their conduct during the period of clerkship. It is surely unnecessary for us to say that we feel the warmest interest in their welfare, remembering as we do that it is upon them that will hereafter rest the duty of maintaining the honour of the profession to which they aspire to belong. Some twenty years ago the writer himself belonged to the body which he now addresses, and he then painfully felt the want of some guide through the labyrinth which he saw extended in apparently endless mazes before him. Since that time indeed, several works of more or less repute have appeared upon the subject of legal education; but all of them labour under one radical defect, namely, that of aiming too high, and of setting before the student an amount of labour which could hardly be accomplished in the course of a long life-time, much less in a period varying in time from three to five years. These authors appear to have forgotten that life is short, although they cannot be charged with obliviousness of the fact that art is long: One might gather from them that their readers intended to become legislators or jurisconsults, and not solicitors. Perhaps nothing is so disheartening to a young man as to have an impossible task set before him, and to be told that unless he performs it, he cannot be deemed adequate to the profession which he has chosen. He turns away with disgust from his mentor, and the great probability is that, feeling he cannot do all, he will not attempt to do anything. If, on the other hand, he does enter upon the prescribed course of study, and endeavours faithfully to go through with it, he will load his mind with many a useless burthen, learn a good deal that he must afterwards unlearn, and waste much valuable time. Few spectacles are so melancholy as that of honest, persevering labour wholly misdirected and misapplied, and thus producing not a tithe of the result which half the same amount of work would have accomplished had it been directed into the proper channels. Another defect under which the writers referred to labour is that they do not sufficiently impress upon the minds of their readers the all-important fact that the business of an attorney and solicitor can no more be learned by mere reading than can the art and mystery of boot-making. In order that a man may practise successfully as an attorney, he must not merely know *what the law is*, but he must know how to *apply and use it*. This can only be learned by steady and unremitting attention to the duties of the office. If an attorney could be duly qualified as such by the mere study of books, the service under articles would be a useless, impertinent and expensive form, since very few attorneys give any formal instruction to their clerks or direct their course of reading. The object of being articled is that the clerk may see how actual business is conducted, so that in due time he may conduct it himself, and however learned he may be in the theory of law, he will assuredly not be competent to practise it, unless during his clerkship he has gone faithfully through what is sometimes, although very improperly, called the drudgery of the office. There is much work, and work, too, of an exceedingly profitable kind, in every trade and profession which is routine, and a knowledge of which can only be acquired by practice, and he is a mere

simpleton and knows nothing of the duties and responsibilities of actual life who neglects to acquire this knowledge, because he thinks it beneath him. The clerk has undertaken by his articles "faithfully and diligently to serve his master in his profession of an attorney-at-law;" and the discharge of the duty which he has thus imposed upon himself will, like the discharge of every other duty, carry with it its own exceeding great reward in a thorough practical knowledge of an honourable and remunerative profession.

We have used the expression, "remunerative profession," and here perhaps it will be proper, although by way of parenthesis, to guard the articled clerk against being discouraged at the very outset of his career by being told, as it is not unlikely that he may be, "Oh! the profession is nothing now to what it once was. You have fallen upon evil days and times. The changes which have been made in the law of late years have cut down profits to a minimum;" and so forth. That vast changes have been made and are still in progress is indeed perfectly true, but still we may be permitted to doubt, for reasons which we will not now enter upon, whether they have diminished the profits of the attorneys, as a body. The profits on individual transactions have been diminished, and some costly proceedings have been entirely swept away from our legal system; but the very fact that men may now go to law without incurring ruinous expense and delay, coupled with the prodigious increase of late years in the wealth and population of the country, has fully compensated for any loss which may have accrued to the profession from law reform. There are croakers in all callings who are never so well pleased as when they can prove to their own satisfaction, and that of their hearers, that the class to which they belong is irretrievably ruined. Do you pay no heed to such prophets of evil; and rest assured that the profession which you have chosen must, so long as the prosperity of this country endures, and so long as human nature remains what it is, continue to afford substantial rewards to its laborious and learned professors.

So much by way of introduction to our subject, which may naturally be divided into three main topics:—

I. The articled clerk's conduct in the office.

II. His course of professional reading.

III. His general conduct during the period of his articles.

Upon all these subjects the advice offered will be the result of the writer's own experience and observation during a five years' clerkship, and a practice of nine years as an attorney.

I. The Articled Clerk's Conduct in the Office.

It is all-important that the articled clerk should enter the attorney's office with a deeply-rooted and salutary conviction of his own ignorance. If we were asked to point out what was the best preparation for learning, we should answer without a moment's hesitation—Humility. We do not mean the "humbleness" of Uriah Heep, but that frame of mind which may well be felt by a man fully conscious of his own powers, when he knows that he is entering upon an entirely new sphere, and planting his foot on paths which he has not hitherto trodden. The articled clerk should fully recognise the fact on the outset of his career that he has everything to learn, and that no detail of office duty can be too trivial for his attention. There is, probably, no one, from his master down to the lowest clerk, from whom he may not learn something, and no one who will not be glad to give him information if he frankly admits his own ignorance, and shows a desire to replace it by knowledge. There are few persons who, being conscious of the possession of knowledge, are not glad to impart it to those who manifest a desire for its acquisition, provided the inquirer is willing to admit, at all events *pro hâc vice*, his own inferiority. Unless, however, this admission is made,—if the articled clerk shows that he thinks himself omniscient, or if he gives himself the airs of an accomplished lawyer during the first year of his articles—he will find all the avenues of information closed to him by his own foolish pride. Nothing disgusts an older man so much as an air of self-sufficiency in a younger one; while, on the other hand, nothing conciliates his regard so much as an ingenuous admission by his juniors of their ignorance and of his knowledge. A priggish, conceited youngster is a bore and a nuisance in all societies; but when he has to take a part in the actual business of life he becomes absolutely intolerable.

We trust, however, that the articled clerk who reads these lines *has* made the first great step to knowledge by confessing to himself the depths of his own ignorance, and that he is therefore willing to be instructed. He will then not be ashamed to appeal to his master or to his fellow clerks for help and advice when he meets with anything in the office routine which puzzles him, and as to which he can obtain no information from his books. The art of asking questions is one which he ought to cultivate most assiduously; and an art it really is, for every one does not know when, how, and from whom to ask them. For instance, the clerk who appeals to his master for a solution of his doubts when the latter is wholly absorbed in some important business, who frames his queries so clumsily as to show that he has not previously digested the subject in his own mind, and does not even precisely know what is the point upon which he wishes to be informed,—or who troubles his master for information which he might equally well get from the engrossing clerk, shows that he has not mastered the art of question-asking, and must therefore sometimes expect to be laughed at or snubbed for his pains. Nor ought the clerk to ask questions where he might with a little trouble acquire the information for himself, either by consulting a treatise, or exercising his own powers of observation or reasoning. When he has taxed these resources and they have failed him, or where the exigencies of business do not give him time to appeal to them, then he may reasonably seek for oral information. While, moreover, we counsel the asking of questions, the clerk must remember that he cannot expect to have all his difficulties solved at once. It would be preposterous for him to insist upon being acquainted with the *rationale* of everything that passes around him, and he must therefore use some moderation in pumping his instructor and fellow clerks, and hope that "in some other day, at some other place," his doubts will be removed.

(*To be continued.*)

THE NEW CHANCERY ORDER—INVESTMENT OF TRUST FUNDS.

We extract the following from the *Times* City article of the 11th inst.:—

"The order of the Court of Chancery regarding the investment of trust funds, posted in the Stock-Exchange on Saturday, was simply, it is presumed, in formal compliance with the Act passed last session, authorizing the employment of such funds in a wider range of securities than has hitherto been permitted, an Act which, from the extent to which it was carried, was regarded by prudent persons with much regret. Among the new investments allowed is Bank Stock, and a more dangerous precedent could not have been established. This stock merely represents the capital of a trading corporation, over which the Government have no control, and, although it happens to be the most sound and influential corporation in the world, its stability still depends upon private management, with respect to the successful continuance of which through future generations the Government and Legislature could have no right to enter into any assumptions. We all regard the Bank of England as a type of the strength of the country itself, and most persons — especially after recent experiences — would prefer holding a Bank of England obligation to any pledge, whether in the form of a telegraph guarantee or otherwise, from our modern State financiers; but that has nothing to do with the principle now involved. The Court of Chancery is bound to keep the funds of which it has the custody under the control of the State, and should on no account place them entirely out of its reach, to be managed for profit or loss by a body of independent directors. At the same time the example furnished to private trustees is of the worst description. We shall soon probably have an agitation which will be difficult to answer for a logical carrying out of the new system. If one joint-stock bank is to be selected, why not another, especially when the favoured establishment happens to be founded, like the Bank of England, on limited liability, which a majority of our legislators still pretend to regard as highly dangerous and objectionable, in comparison with the unlimited plan? The Bank of England, moreover, is a constant mark for the grasp of every hard-pressed Chancellor of the Exchequer. For 50 years this has been the case. At one period the Government action in that respect caused a sudden fall of 20 or 30 per cent. in the value of the stock, and it is a curious circumstance that while Mr. Gladstone was countenancing the present measure he can scarcely have been unconscious that in the course of a few months he would be likely to make a proposal to the proprietors which, had it been accepted in its original form, would have been followed in the market by a serious depreciation."

The following letter on the subject also appears in the same journal:—

Sir,—With reference to your observation on the recent

order of the Court of Chancery sanctioning the investment of trust funds committed to its care in the stock of a trading corporation, allow me further to call your attention to the sanction the Court has given to the investment in Indian stock. It does not appear whether this is Indian Loan or stock of the defunct East India Company, but I assume it to be the latter. This stock is now nearly 220, but it is redeemable in 1874 at £200; the investment consequently involves the loss of 10 per cent. in the capital, and the adoption of it is a sacrifice of the interests of those entitled in remainder, or to the *corpus*, to those presently entitled to the income—a principle which it is not easy to justify, and which must surely have escaped the attention of the Chancery judges.

"It is difficult to understand why these eminent authorities have not sanctioned an investment in funds guaranteed by the Imperial Government, such as the Turkish 4 per Cents.—I remain, Sir, your obedient servant, "A SOLICITOR."

Public Companies.

BILLS IN PARLIAMENT

For the Formation of New Lines of Railways in England and Wales.

The standing orders of both Houses of Parliament have been complied with in the following cases:—

ALTON, ALRESFORD, AND WINCHESTER.—Capital, £150,000.

ASTON TO DITTON AND BRIDGWATER CANAL.—Capital, £550,000.

CHELFORD AND KNUTSFORD.—Capital, £60,000.

COLEFORD.

DEWSBURY, BATLEY, GOMERSAL, AND BRADFORD.—Capital, £400,000.

DISLEY AND HAYFIELD.—Capital, £25,000.

EASTERN COUNTIES AND SAFFRON WALDEN.—Capital, £35,000.

EDGEHILL AND BOOTLE.—Capital, £190,000.

HAMMERSMITH, PADDINGTON, AND CITY JUNCTION.—Capital, £180,000.

MARLBOROUGH.—From Berks and Hants Extension to Marlborough. Capital, £45,000.

MIDLAND.—A line from WHITACRE to NUNEATON. Capital, £186,000.

MIDLAND COUNTIES AND SHANNON JUNCTION.—Capital £120,000.

MONMOUTH.

PONTYPOOL.

RAMSEY.—Capital, £30,000.

RHYMNEY.—Capital, £90,000.

USK.

WEST MIDLAND AND SEVERN VALLEY JUNCTION.—Capital, £100,000.

WINWICK AND GOLBORNE.—Capital, £40,000.

REPORTS AND MEETINGS.

BRISTOL AND EXETER RAILWAY.

The directors of this company will recommend at the approaching meeting a dividend of 5½ per cent. per annum.

CHARING CROSS RAILWAY.

At the half-yearly meeting, held on the 13th instant at the London-bridge station, the Hon. J. Byng in the chair, it was resolved that the proposition for extending the line to Cannon-street should be carried out. By this extension passengers could be conveyed from Cannon-street to Charing-cross in six minutes, the time now occupied by omnibuses being twenty-five minutes. It was stated that a large increase of traffic might be anticipated from this source.

GREAT WESTERN RAILWAY.

The directors recommend that a dividend of 3½ per cent. per annum be paid for the year ending the 31st Dec. 1860. This will leave a balance of about £13,000 to be carried forward to the next half-year.

HULL AND SELBY RAILWAY.

A dividend of £2 10s. per £50 or whole share, and in like proportions on the half and quarter shares, was declared at the half-yearly meeting of this company, held on Monday last.

LANCASHIRE AND YORKSHIRE RAILWAY.

The directors by their report recommended that a dividend of 6 per cent. per annum (less income tax), carrying a balance of £22,007 to the next half-yearly account.

At the half-yearly meeting of the company, held on the 13th inst., the report was confirmed.

The directors have introduced into Parliament five Bills for extensions and branches, and seek authority to raise £500,000 additional capital beyond the cost of the new railways.

LONDON AND NORTH WESTERN RAILWAY.

The directors of this company resolved, on the 13th inst., to recommend to the ordinary meeting, to be held on the 22nd inst., a dividend at the rate of 5½ per cent. per annum for the half-year ending the 31st of December last, leaving a balance of £27,000 to be carried forward.

LONDON AND SOUTH WESTERN RAILWAY.

At the half-yearly meeting of this company, held on the 14th inst., the report of the directors, recommending that a dividend of £5 5s. per cent. per annum be declared, and to be payable on the 28th instant, was adopted.

MID KENT RAILWAY.

The directors of this company recommend a dividend of £5 per cent. per annum.

MIDLAND RAILWAY.

The directors report that the traffic receipts for the last half-year have been very satisfactory. They recommend that the following dividends (less income tax) be declared, and payable on the 1st of March, viz.—

£3 10s. upon each £100 of consolidated stock.

£2 16s. 3d. upon each £100 of Birmingham and Derby consolidated stock.

£3 10s. upon each £100 of preferential and Erewash Valley stock.

£2 5s. on each £100 of consolidated 4½ per cent. preferential stock.

£2 upon each £100 of Leicester and Hitchin preferential stock.

£2 5s. upon each £100 consolidated irredeemable.

4½ per cent. preferential stock.

1s. 4 1-5d. on each £6 preference share.

5d. upon each £6 4s. share, being 91 days' interest on the deposit at 7 per cent. per annum, leaving a balance of £3,726 for the next half-year.

NORTH EASTERN RAILWAY.

The directors report a considerable increase in the traffic receipts, and recommend the following dividends to be declared, viz.—

On the Berwick ordinary stock, at the rate of 5½ per cent. per annum; and on the Thirsk and Malton stock, at the rate of 4 per cent. per annum.

On the York ordinary stock, at the rate of 5 per cent. per annum.

On the Leeds ordinary stock, at the rate of 3 per cent. per annum.

NORTH STAFFORDSHIRE RAILWAY.

The report of the directors states that the general prospects of the undertaking are satisfactory. At the half-yearly meeting, held on the 14th instant, the recommendation of the directors that a dividend of 4 per cent. per annum should be declared, leaving a balance of £3,859 6s. to be carried forward to the next half-year, was adopted.

ROYSTON AND HITCHIN.

At the half-yearly meeting of this company, held on the 11th instant, the following resolution was moved and carried unanimously—viz., "That a dividend after the rate of 6 per cent. per annum, less income-tax and 1*d.* per £6 5*s.* stock for expenses of management, adding to the dividend 6*d.* per £6 5*s.* stock, as determined by the proprietors on the 13th of August last, be declared on the Royston, Hitchin, and Shepreth consolidated stock for the half-year ending the 1st of February, 1861, and be paid forthwith."

Somerset Central Railway.

At the half-yearly meeting of this company held on the 9th instant, resolutions declaring a dividend at the rate of 4 per cent. per annum (less income tax), converting paid up shares with consolidated stock, and re-electing the retiring directors and auditor, were passed.

South Staffordshire Railway.

At a special meeting of this company, held on the 14th inst.' the proposal for a transfer of the lease of the line from Mr. M'Lean to the London and North Western Co. was carried by a large majority.

Stockton and Darlington Railway.

At a recent meeting of this company a dividend of 9½ per cent. per annum was declared on the ordinary shares, after payment of the following dividends on preference shares:—viz. 5 per cent. per annum on the preference A shares, 6 per cent. per annum on the preference B and C shares.

The following amongst other Bills have been sent up for consideration on their merits before committees of the House of Lords:—Charing-cross (City terminus), Cornwall, Dartmouth, and Torbay, Devon Valley; Eastern Counties and Saffron Walden; Edgware, Highgate, and London; Finsbury-circus Railway Station; Hammersmith, Paddington, and City Junction, Kensington and North and South London Junction, Metropolitan (extension to Finsbury-circus), North-Eastern and South-Western, North London (branch to the City and widening), North Metropolitan Junction, Victoria Station and Pimlico, and West London Extension.

Law Students' Journal.

LAW LECTURES AT THE INCORPORATED LAW SOCIETY.

Mr. Frederick John Turner, on Conveyancing, Monday, February 18.

Mr. George Wirgman Hemming, on Equity, Friday, February 22.

Court Papers.

Exchequer of Pleas.

This Court will hold a sitting on Monday, the 25th day of February next, and will, at such sitting, proceed in giving judgment in matters then standing for judgment.

Court for Divorce and Matrimonial Causes.

The sittings of the Court for Divorce and Matrimonial Causes are postponed from Monday, the 18th of February, until Thursday, the 21st of February, 1861.

Divorce Registry, February 12, 1861.

Petitions for Private Bills.—The House of Lords has recently agreed to an order that it will not receive any petition for a private Bill after the 26th of March next, unless such private Bill shall have been approved by the Court of Chancery; nor any petition for a private Bill approved by the Court of Chancery after the 16th May next. And that it will not receive any report from the judges, upon petitions presented to the House for private Bills, after the 16th May.

Charitable Funds.—A return has been made showing the aggregate amount in the hands of the official trustees of charitable funds at the close of the year 1860. These official trustees are appointed by the Lord Chancellor under the Charitable Trusts Act of 1853, and to them the judge of any court may direct the transfer of funds for better security, or at the desire of the previous trustees; and at the end of the year they held no less than £785,008 Government Stock, £1,369 India Five per Cent. Stock, £5,388 Bank Stock, and £3,000 debenture stock of the London and North-Western Railway Company, besides £25,652 cash.

Births, Marriages, and Deaths.

BIRTHS.

ASTON—On Feb. 9, the wife of James Jones Aston, Esq., Barrister-at-Law, of a daughter.

MARTIN—On Feb. 8, at Strood, Kent, the wife of Charles Martin, Esq., Solicitor, of a daughter.

TURNER—On Feb. 13, the wife of Frederick J. Turner, Esq., Barrister-at-Law, of a daughter.

MARRIAGES.

FITZGERALD—DOWNING—On Feb. 12, Pierce Fitzgerald, Esq., of Cork, Solicitor, to Kate, daughter of the late Dennis Downing, Esq., of Ashfield, county Cork.

LEWIS—COATES—On Feb. 7, Charles Matthew Lewis, Esq., H. M.'s 1st Bombay Grenadiers, son of Arthur James Lewis, Esq., Advocate-General, Bombay, to Louisa Middleton, daughter of Edmund Coates, Esq., of Park-place Villas, Paddington.

WILKS—STRINGER—On Feb. 12, George Wilks, Esq., Solicitor, Hythe, Kent, to Fanny, daughter of William Stringer, Esq., Solicitor, New Romney.

DEATHS.

HALL—On Feb. 10th and 12th, Henry Brooke, aged 4 years, only son, and Eleanor Dalton, aged 2 years, youngest daughter of Henry Hall, Esq., Solicitor, Ashton-under-Lyne.

OWENS—On Jan. 28, at Holyhead, aged 87, Owen Owens, Esq., Solicitor.

WILLIAMS—On Feb. 11, aged 63 years, Elizabeth, relict of Peter Williams, Esq., Solicitor, Holywell, Flintshire.

Unclaimed Stock in the Bank of England.

The Amount of Stock heretofore standing in the following Names will be transferred to the Parties claiming the same, unless other Claimants appear within Three Months:—

Branson, Robert Thomas, Esq., Pembroke College, Oxford, £100 Consols.—Claimed by Rev. Robert Thompson Branson.

Hayward, Benjamin, Gent., West Lavington, Wilts, and John Hayward, Gent., Wilsford, Wilts, £1,519 16s. 2d. Consols.—Claimed by John Hayward, the surviving executor of the said Benjamin Hayward.

Hele, William Selby, Esq., Sussex-gardens, Hyde-park, and Bartle John Lawrie Frere, Gent., Lincoln's-inn, £2,197 1s. 4d. Consols.—Claimed by Bartle John Lawrie.

Palmer, John, Gent., Ryder-street, St. James's, £40 New Three per Cents.—Claimed by George Palmer, the administrator.

English Funds and Railway Stock

(Last Official Quotation during the week ending Friday evening.)

	English Funds.		Shrs.	Railways—*Continued.*	
	Bank Stock	238	Stock	Ditto A. Stock	105
	3 per Cent. Red. Ann..	91¾	Stock	Ditto B. Stock	134
	3 per Cent. Cons. Ann.	91¾	Stock	Great Western	70¾
	New 3 per Cent. Ann..	91¾	Stock	Lancash. & Yorkshire	112
	New 2½ per Cent. Ann.	..	Stock	London and Blackwall..	64
	Consols for account ..	92½	Stock	Lon.Brighton& S.Coast	113
	India Debentures, 1858.	95¾	25	Lon. Chatham & Dover	10
	Ditto 1859.	..	Stock	London and N.-Wstrn..	99¾
	India Stock	..	Stock	London & S.-Westrn.	94¾
	India 5 per Cent. 1859..	100¾	Stock	Man. Sheff. & Lincoln..	51¼
	India Bonds (£1000) ..	dis	Stock	Midland	132¾
	Do. (under £1000).....	dis 22	Stock	Ditto Birm. & Derby	106
	Exch. Bills (£1000)...	par.	Stock	Norfolk.....	86
	Ditto (£500)....	par.	Stock	North British	64¾
	Ditto (Small) ..	par.	Stock	North-Eastn. (Brwck.)	102½
			Stock	Ditto Leeds	88½
	Railway Stock.		Stock	Ditto York	89½
			Stock	North London.....	103
			Stock	Oxford, Worcester, & Wolverhampton ..	..
Stock	Birk. Lan. & Ch. Junc.	82			
Stock	Bristol and Exeter....	101	Stock	Shropshire Union	51
Stock	Cornwall	6¼	Stock	South Devon	41
Stock	East Anglian	16¾	Stock	South-Eastern	85¼
Stock	Eastern Counties	50	Stock	South Wales	92
Stock	Eastern Union A. Stock	39	Stock	S. Yorkshire & R. Dun	100
Stock	Ditto B. Stock....	26½	25	Stockton & Darlington	42
Stock	Great Northern	112	Stock	Vale of Neath	70

London Gazettes.

Windings-up of Joint Stock Companies.

Unlimited in Chancery.

Friday, Feb. 15, 1861.

Solvency Mutual Guarantee Company.—Creditors to prove their debts before V. C. Wood, on or before March 7.

Limited in Bankruptcy.

Liverpool Tradesman's Loan Company (Limited).—Commissioner Perry has appointed March 6, at 11, Liverpool, for creditors to prove their debts.

Creditors under 22 & 23 Vict. cap. 35.

Last Day of Claim.

TUESDAY, Feb. 12, 1861.

BELCHER, JOHN, Druggist, 1, Walcot-place, Hackney, Middlesex. Thompson & Debenham, Solicitors, Salter's Hall, London. March 11.

BEE, SARAH, otherwise BECKS, Widow, Ifield, Sussex. Rawlinson, Solicitor, Horsham. March 31.

DOWNES, CHRISTOPHERIA Baroness, Right Hon., 19, Grafton-street, Piccadilly, Middlesex, and of Binstead Cottage, near Ryde, Isle of Wight. Patterson & Bradly, Solicitors, 19, Portland-street, Southampton. April 1.

ECCLESTON, WILLIAM, Fishmonger, Dall Cord, Birmingham, Warwickshire. Hodgson & Allen, Solicitors, 13, Waterloo-street, Birmingham. March 20.

FIGGINS, VINCENT, Type Founder, Southgate, Middlesex, and of Westreet, London. Clarke & Morice, Solicitors, 29, Coleman-street, London. April 1.

HALL, HENRY, Butler, 7, Bedford-square, Bloomsbury, Middlesex. Harcourt, Solicitor, 2, King's Arms-yard, Coleman-street, E.C. March 23.

HUCKLING, THOMAS, Gent., Lozell's-lane, Aston, near Birmingham. W. & A. F. Morgan, Solicitors, 37, Waterloo-street, Birmingham. March 27.

HUSBAND, JAMES, Shipwright, Falmouth. Berry, Solicitor, 27, Bucklersbury, London. March 25.

MILO, JOHN, Tallow Chandler, 49, Kingsland-road, Middlesex. Harcourt, Solicitor, 2, King's Arms-yard, Coleman-street, E.C. March 23.

PRATTIE, JOHN, Joiner, formerly of Preston, late of Liverpool. Cattley & Fryer, Solicitors, 40, Lime-street, Preston. March 11.

SHARP, CATHERINE, Innkeeper, Castle Inn, Canterbury. Trehern & White, Solicitors, 13, Barge-yard chambers, Bucklersbury. April 6.

TURNER, ANN, otherwise HENSLER, 9, Richmond-terrace, Clifton, Bristol. Strickland, Solicitor, 2, All Saints-court, Bristol. April 1.

WATERS, WILLIAM, Gent., formerly of Westbourne-place, Queen's-road, Bayswater, afterwards of Nuneaton, Warwickshire, late of 271, Bethnal-green-road, Middlesex. Twiss, Solicitor, 12, Gray's-inn-square, London. March 31.

WELLS, CHARLES, Blacksmith, Cheriton, Kent. Brockman & Harrison, Solicitors, Folkstone, Kent. May 1.

WILKINSON, ANN, Spinster, Kempsey, Worcestershire. Barnes & Bernard, 2, Great Winchester-street, London. March 25.

FRIDAY, Feb. 15, 1861.

COTTLE, ROBERT, Printer, Bookseller, and Stationer, Southampton. Lamb, Brooks, & Challis, Solicitors, Basingstoke. Feb. 20.

DRUMMOND, HENRY, Esq., M.P., Albany-park, near Guildford, Surrey. Fladgate, Clarke, & Finch, Solicitors, 40, Craven-street, Strand, Middlesex. March 21.

HOOPER, STEPHEN, Stationer, formerly of 45, Fleet-street, London, and late of Blackfriars-road, Surrey. Hooper, Executor, 45, Fleet-street, London. April 16.

MCHUGH, MICHAEL, Coal Merchant, Gloucester-terrace, Old Brompton, Middlesex. Atkins, Andrew Atkins, & Irvine, Solicitors, 5, White Hart-court, Lombard-street. April 13.

OAKES, SAMUEL HENRY, Engineering Contractor, formerly of Holly Bank, Hanbury, Staffordshire, then of Gerard-street, Derby, but late of Merthyr Tydvil, Glamorganshire. Porter, Builder, Gerard-street, Derby, or Norris, Surveyor, Market-street, Nottingham, Executors. April 15.

PEDDLE, CATHARINE, Widow, 14, Charlton King's-road, Kentish-town, Middlesex. Hustler, Solicitor, Halstead, Essex. May 25.

SCRIMGEOUR, MARGARET, Spinster, 11, Brompton-crescent, Brompton, Middlesex. Clark, Solicitor, 160, Oxford-street, Middlesex.

Creditors under Estates in Chancery.

Last Day of Proof.

TUESDAY, Feb. 12, 1861.

BRADSHAW, JAMES, 7, Lewis-street, Victoria-road, Kentish Town. Elsmore v. Pratt, V. C. Stuart. Feb. 25.

CADLE, THOMAS, Gent., formerly of Newent, Gloucestershire, late of Ross, Herefordshire. Cadle v. Woollett, V. C. Kindersley. March 7.

FITCHETT, HENRIETTA MARIA, Widow, Nuneaton, Warwickshire. Drake v. Row, V. C. Wood. March 5.

HOSE, JOHN CHRISTIAN, Druggist, 12, Bedford-terrace, Trinity-square, Southwark, Surrey. Hose v. Woodward, M.R. March 8.

INSKIP, HARRY, Seed Crusher, Hertford. Inskip v. Inskip, V. C. Wood. March 6.

KEMP, THOMAS, Yeoman, Mystole, Chartham, Kent. Kemp v. Steddy, M.R. March 8.

PATERSON, PETER, Esq., Park Lodge, Highbury-park, Middlesex. Paterson v. Paterson, M.R. March 7.

PARKIN, MARY, Widow, formerly of 36, Southampton-row, Russell-square, late of Inverness-road, Middlesex. Magson v. Roots, M.R. March 4.

PLUMMER, MATTHEW, Newcastle-upon-Tyne. Collingwood v. Plummer, V. C. Stuart. March 1.

POTTER, ELIZABETH, Spinster, Cheam, Surrey. Rickey v. Bailey, V. C. Kindersley. March 13.

SMITH, HUGH WILLIAM FALLISER, Esq., 2, Upper Moira-place, Southampton. Perkins v. Cooke, V. C. Wood. March 4.

STAINS, ELIZABETH, Spinster, St. Peter, Canterbury. Cooper v. Anderson, M.R. March 2.

STAINS, EDWIN, Esq., formerly of Patrixbourne, Kent, and now of Munster House, Fulham, Middlesex, a person of unsound mind. Kersey v. Stains, V. C. Stuart. March 7.

WATERS, JAMES, Wine Merchant, 1, Arthur-street West, London Bridge. Waters v. Grose, V. C. Stuart. March 18.

FRIDAY, Feb. 15, 1861.

BROWN, THOMAS, Gent., Camberwell-new-road, Surrey. Brown v. Brown, M. R. March 5.

CANDY, JOHN, Gent., Widcombe, Bath. Candy v. Candy, V. C. Stuart. March 8.

MANSFIELD, RICHARD, Yeoman, Hill Farm, Droxford, Southampton, but formerly of Fareham. Batchelor v. Howard, M. R. March 9.

MARSDEN, JOHN, Gent., Colchester, Essex. Cartwright v. Marsden, M.R. March 5.

MATTHEW, STEPHEN WILLIAM, Licensed Victualler, 17, London-terrace, Hackney-road, Middlesex. Everard v. Matthew, V. C. Stuart. March 23.

Assignments for Benefit of Creditors.

TUESDAY, Feb. 12, 1861.

BARRETT, RICHARD, Builder, Truro, Cornwall. *Sols.* Carlyon & Paull, Truro. Feb. 8.

BEAUMONT, JOSEPH, Manufacturer, Smithey-place, Almondbury, Yorkshire. *Sol.* Mills, 36, New-street, Huddersfield. Feb. 6.

LEWIS, THOMAS HOWELL, Grocer, Dowlais Iron Works, Glamorganshire. *Sol.* Smith, Victoria-street, Merthyr Tydfil. Jan. 12.

MAY, WILLIAM, Grocer & Draper, North Frodingham, Yorkshire. *Sol.* Allen, Great Driffield. Feb. 7.

OXLEY, ROBERT, Maltster & Corn Dealer, Chippenham, Wilts. *Sol.* Goldney, Chippenham. Jan. 29.

PIKE, WILLIAM, Innkeeper & Brewer, Hotwell-road, Bristol. *Sol.* Wood, Bristol. Jan. 15.

PUTLAND, SAMUEL, Builder & Road Contractor, Balcomb, Sussex, and Priory-street, Hastings. *Sols.* J. & S. Langham, Hastings, Sussex. Feb. 9.

SEVILLE, THOMAS, Silk & Cotton Manufacturer, Failsworth, Lancaster. *Sols.* Sale, Worthington, Shipman, & Seddon, 29, Booth-street, Manchester. Jan. 15.

SHAW, JONATHAN, Painter, Carver, & Gilder, Beverley, Yorkshire. *Sol.* Champney, Beverley. Jan. 21.

TAYLOR, EMANUEL, Jun., Grocer, South Shields. *Sols.* Hodge & Harle, Wellington-place, Pilgrim-street, Newcastle-upon-Tyne. Feb. 1.

WILCOCK, JOSEPH, Grocer & Tea Dealer, Penistone, Yorkshire. *Sol.* Unwin, 42, Queen-street, Sheffield. Jan. 17.

WILLIAMS, WILLIAM, Currier, Camborne, Cornwall. *Sol.* Jenkins, Penryn. Feb. 7.

FRIDAY, Feb. 15, 1861.

BROADWAY, WILLIAM, Draper, 33, Tavistock-street, Devonport. *Sols.* Davidson, Bradbury, & Hardwick, Weavers' Hall, 22, Basinghall-street. Jan. 31.

COLLINS, WILLIAM, Grocer & General Dealer, Bryntroedgam, Margam, Glamorganshire. *Sol.* Griffith, Aberavon. Feb. 5.

ECCLES, THOMAS, Grocer, Adlington, Lancaster. *Sols.* Stanton & Jones, Chorley. Jan. 15.

GREGORY, WILLIAM HENRY, Draper & Milliner, Birmingham. *Sol.* Jones, 15, Size-lane, London. Feb. 11.

HARDCASTLE, ROBERT ANTHONY, Shipbroker & Merchant, Cardiff, Glamorganshire. *Sol.* Matthews, Church-street, Cardiff. Jan. 31.

HARVEY, ROUT, Mantle Manufacturer, Bury St. Edmunds, Suffolk. *Sol.* Jones, 15, Size-lane, London. Jan. 30.

HEATHCOTE, CHARLES, Horn Merchant, Sheffield. *Sols.* Branson & Son, St. James-row, Sheffield. Jan. 19.

HINDE, CHARLES, Tailor & Draper, Holbeach, Lincolnshire. *Sol.* Rice, Boston. Jan. 30.

JONES, DAVID, Shopkeeper, Pyle, near Bridgend, Glamorganshire. *Sols.* Sale, Worthington, Shipman, & Seddon, 29, Booth-street, Manchester. Jan. 21.

JONES, WILLIAM, Linen Draper, Aberavon, Glamorganshire. *Sols.* Sale, Worthington, Shipman, & Seddon, 29, Booth-street, Manchester. Jan. 19.

LABRUM, RICHARD, Steam Threshing Machine Keeper, Rushmere House, Leighton Buzzard, Bedfordshire. *Sols.* Blake & Snow, 22, College-hill, London. Feb. 7.

MOORE, GEORGE, Farmer & Nurseryman, Perry Barr, Staffordshire. *Sol.* Holden, 1, Cherry-street, Birmingham. Jan. 19.

ROBINSON, FREDERICK, Farmer, Brandon, Hough-on-the-Hill, Lincolnshire. Feb. 12. *Sol.* Footit, Newark-upon-Trent.

SIMCOCK, WILLIAM, Watchmaker, Warrington, Lancashire. Feb. 6. *Sol.* Geddes, 3, Cairo-street, Warrington.

SKINNER, WILLIAM, Innkeeper, Redcar, Yorkshire. Feb. 9. *Sols.* Newsam & Brewster, Middlesbrough.

TUCKWELL, WELLES, Yeoman, West Nymph Farm, South Tawton, Devonshire. Jan. 26. *Sol.* Fulford, Okehampton.

WRIGHT, THOMAS, Draper, Birmingham, Warwickshire. Jan. 16. *Sols.* Sale, Worthington, Shipman, & Seddon, 29, Booth-street, Manchester.

Bankrupts.

TUESDAY, Feb. 12, 1861.

ARMSTONG, ANDREW, Flour & Provision Dealer, York. *Com.* Ayrton: March 4 & 25, at 11; Leeds. *Off. Ass.* Hope. *Sols.* Bond & Barwick, Leeds. *Pet.* Feb. 11.

BATEMAN, HENRY, Timber Merchant, 60, Old Broad-street, and of Lloyd's, Underwriter. *Com.* Fane: Feb. 28, at 12; and April 5, at 11: Basinghall-street. *Off. Ass.* Cannan. *Sols.* Lawrance, Plews, & Boyer, 14, Old Jewry-chambers, Old Jewry. *Pet.* Feb. 12.

CHAPMAN, JOHN, & GEORGE GRANGER, Iron Masters, Britannia Iron Works, Oldbury, Worcestershire. *Com.* Sanders: March 1 & 22, at 11; Birmingham. *Off. Ass.* Whitmore. *Sols.* Hayes, Wolverhampton; or James & Knight, Bennett's-hill, Birmingham. *Pet.* Feb. 11.

COGMAN, FREDERICK, Tailor & Draper, Norwich. *Com.* Fane: Feb. 28, at 11-30; and March 29, at 12; Basinghall-street. *Sols.* Turner & Turner, 68, Aldermanbury; or Miller, Son, & Bugg, Norwich. *Pet.* Feb. 8.

COWELL, JOHN, & JAMES COWELL, Iron Founders & Machine Makers, Blackburn (Cowell, Riley, & Cowell.) *Com.* Jemmett: Feb. 28, and March 21, at 12; Manchester. *Off. Ass.* Pott. *Sol.* Marsden Pankhurst, Manchester. *Pet.* Feb. 6.

DENTON, JOHN, WILLIAM DENTON, & JOHN DENTON, jun., Builders & Brickmakers, Dartmouth-park, Forest-hill, Kent (John Denton & Sons). *Com.* Fane: Feb. 21, and March 22, at 11; Basinghall-street. *Off. Ass.* Cannan. *Sols.* Lawrance, Plews, & Boyer, 14, Old Jewry-chambers, Old Jewry. *Pet.* Feb. 5.

DUTTON, HERBERT, & EDMUND DUTTON, Builders, Kidderminster, Worcestershire (Herbert Dutton & Son). *Com.* Sanders; Feb. 25, and March 25, at 11; Birmingham *Off. Ass.* Kinnear. *Sols.* Batham, Kidderminster, or Hodgson & Allen, Birmingham. *Pet.* Feb. 8.

FLOWER, EDWARD, Silversmith & Jeweller, Bold-street, Liverpool. *Com.* Perry: Feb. 25, at 11, and March 19, at 12; Liverpool. *Off. Ass.* Morgan. *Sols.* Crosby, Ironmonger-lane, and 3, Church-court, Old Jewry, London, or Dodge & Wynne, 7, Union-court, Castle-street, Liverpool. *Pet.* Feb. 8.

GENDERS, JOHN, Boot and Shoe Maker, Darlaston, Staffordshire *Com.* Sanders: March 1 & 22, at 11; Birmingham. *Off. Ass.* Whitmore. *Sols.* Slater, Darlaston, or Hodgson & Allen, Birmingham. *Pet.* Feb. 8.

GREEN, WALTER, & JOHN GRIFFITH BEAVAN SAYCE, Wine and Spirit Merchants, Worcester (Green & Sayce); Wine and Spirit Merchants, Malvern, Worcestershire (Walter Green & Co.); Wine and Spirit Merchants, Llandudno, Caernarvonshire (George Beavan & Co.) *Com.* Sanders: Feb. 25, and March 25, at 11; Birmingham. *Off. Ass.* Whitmore. *Sols.* Watkins, Worcester, or E. & H. Wright, Birmingham. *Pet.* Feb. 11.

HARGREAVES, WILLIAM, JOSEPH OWEN, & JAMES PERKIN, Wrought Iron Manufacturers, Bradford (Hargreaves, Haley, & Co.). *Com.* West: Feb. 28, and March 22, at 11; Leeds. *Off. Ass.* Young. *Sols.* Wood, Bradford, or Cariss & Cudworth, Leeds. *Pet.* Feb. 5.

JONES, DANIEL, Ironmonger, Wrexham, Denbighshire. *Com.* Perry; Feb. 27, and March 19, at 11; Liverpool. *Off. Ass.* Bird. *Sols.* Buckton, Wrexham, or Evans, Son & Sandys, Liverpool. *Pet.* Feb. 7.

KILNER, WILLIAM, Licensed Victualler, High-green, Ecclesfield, Yorkshire. *Com.* West: Feb. 23, and March 23, at 10; Sheffield. *Off. Ass.* Brewin. *Sols.* Smith & Burdekin, Sheffield, *Pet.* Jan. 26.

OWEN, HENRY, & GEORGE UGLOW, Hosiers, 12, Wood-street, London, and of Tewkesbury, Gloucestershire. *Com.* Holroyd: Feb. 26, at 2.30, and March 26, at 12; Basinghall-street. *Off. Ass.* Lee. *Sol.* Jones, 5, Newinn, London. *Pet.* Feb. 9.

PINKERTON, GEORGE, & ERNEST HAWKINS, Metal Brokers, 34, Great St. Helen's, London (Pinkerton & Co.). *Com.* Fonblanque: Feb. 26, and March 26, at 12; Basinghall-street. *Off. Ass.* Stansfield. *Sols.* H. & F. Chester, Church-row, Newington Butts. *Pet.* Feb. 1.

PRESCOTT, COMPTON, Corn Dealer, Yarnton, Oxfordshire. *Com.* Holroyd: Feb. 26, at 3; and March 26, at 1; Basinghall-street. *Off. Ass.* Edwards. *Sols.* Pownall, Son, & Cross, Staple-inn, London; or Dayman & Walsh, Oxford. *Pet.* Feb. 1.

ROSE, WILLIAM, Rope Maker, Birmingham. *Com.* Sanders: Feb. 25, and March 25, at 11; Birmingham. *Off. Ass.* Kinnear. *Sols.* Harrison & Wood, Birmingham. *Pet.* Feb. 11.

SKINNER, CHARLES RICHARD, Tanner & Currier, Worcester. *Com.* Sanders: Feb. 25, and March 25, at 11; Birmingham. *Off. Ass.* Whitmore. *Sols.* Duignan & Edsworth, Walsall. *Pet.* Feb. 6.

FRIDAY, Feb. 15, 1861.

BOUGHEY, JOHN STEPHENSON, Wholesale Tea Dealer, 89, Great Tower-street, London. *Com.* Fonblanque: Feb. 27, at 12.30; and March 27, at 1.30; Basinghall-street. *Off. Ass.* Stansfeld. *Sol.* Hyde, 33, Elyplace, Holborn. *Pet.* Feb. 6.

BROOK, GEORGE, Boot & Shoe Manufacturer, Guildhall-street, Canterbury, Kent. *Com.* Fonblanque: Feb. 27, at 1; and March 27, at 2; Basinghall-street. *Off. Ass.* Graham. *Sol.* Preston, 16, Broad-street-buildings, London. *Pet.* Feb. 2.

BURROWS, GEORGE, Lace Manufacturer, Nottingham. *Com.* Sanders: Feb. 28, and March 21, at 11; Nottingham. *Off. Ass.* Harris. *Sol.* Maples, Nottingham. *Pet.* Feb. 11.

CARLYLE, JOHN, Linen & Woollen Draper, 17, Moss-street, Liverpool. *Com.* Perry: Feb. 27, and March 19, at 12; Liverpool. *Off. Ass.* Morgan. *Sols.* Aspinall & Bird, 3, Union-court, Castle-street, Liverpool. *Pet.* Feb. 5.

DANIEL, WILLIAM, Innkeeper & Grocer, Penydarren, Merthyr Tydfil, Glamorganshire. *Com.* Hill: Feb. 26, and March 26, at 11; Bristol. *Off. Ass.* Miller. *Sols.* Ensor, Cardiff, or Abbot, Lucas, & Leonard, Bristol. *Pet.* Jan. 31.

DRUMMOND, ROBERT HORATIO WILLIAM, Contractor & Manufacturer of Manure, Iceland-wharf, Old Ford, Bow, Middlesex (Robert Drummond & Co.). *Com.* Holroyd: Feb. 28, at 2; and March 26, at 12.30; Basinghall-street. *Off. Ass.* Lee. *Sol.* Brutton, 27, Basinghall-street, London. *Pet.* Feb. 14.

FERGUSON, JAMES, Draper, Stonehouse, Devonshire, *Com.* Andrews: Feb. 25, and April 6, at 12.30; Plymouth. *Off. Ass.* Hirtzel. *Sols.* Wood, Bristol, or Elworthy, Curtis, & Dawe, Plymouth. *Pet.* Feb. 4.

HOGG, WILLIAM, Buyer and Letter of Machines, Lapford, Devonshire *Com.* Andrews: Feb. 28, and April 11, at 12; Exeter. *Off. Ass.* Hirtzel. *Sol.* Tanner, Crediton; Agents, Turner & Hirtzel, Exeter, *Pet.* Jan. 29.

HOWARTH, THOMAS, & WILLIAM CRONSHAW, Calico Manufacturers, Warrington, Lancashire. *Com.* Jemmett: March 1 & 21, at 12; Manchester. *Off. Ass.* Hernaman. *Sols.* Higson & Robinson, Cross-street, Manchester. *Pet.* Feb. 7.

M'MILLAN, ALEXANDER, & WILLIAM BLACKBURN, Woollen Warehousemen, Star-court, Bread-street, Cheapside, London. *Com.* Evans: Feb. 28, and March 22, at 11; Leeds. *Off. Ass.* Young. *Sol.* Settle, Leeds. *Pet.* Jan. 22.

NICKOLL, JAMES, & ROBERT FRAZER NORTH, Tallow Brokers, 27, Bishopsgate-street Within, London (Nickoll & North). *Com.* Fonblanque: Feb. 27, at 2; and March 27, at 1; Basinghall-street. *Off. Ass.* Graham. *Sols.* Freshfields & Newman, 5, Bank-buildings, London. *Pet* Feb. 2.

NIEMANN, EDMUND JOHN, Picture Dealer, 76, Newman-street, Oxford-street, Middlesex. *Com.* Holroyd: Feb. 28, at 1.30; and March 26, at 2; Basinghall-street. *Off. Ass.* Lee. *Sols.* Lawrance, Plews, & Boyer, 14, Old Jewry-chambers, London. *Pet.* Feb. 14.

ROBERTS, JOHN SIMPSON, Factor and Gun Maker, Birmingham. *Com.* Sanders: March 1 and 22, at 11; Birmingham. *Off. Ass.* Kinnear. *Sols.* Bartleet & Son, Birmingham. *Pet.* Dec. 31.

ROBINSON, BENJAMIN, Cloth Merchant, Huddersfield, *Com.* West: Feb. 28, and March 21, at 11; Leeds. *Off. Ass.* Young. *Sols.* Jessop, Huddersfield, or Bond & Barwick, Leeds. *Pet.* Feb. 8.

SMITH, ARTHUR, Engineer, Paragon-buildings, New Kent-road, Surrey. *Com.* Goulburn: Feb. 27, and April 1, at 12; Basinghall-street. *Off. Ass.* Pennell. *Sols.* Peck & Downing, 10, Basinghall-street, London. *Pet.* Feb. 11.

WILLIAMS, WILLIAM HENRY, Apothecary, Manor House, Plaistow, Essex. *Com.* Fonblanque: Feb. 26, and March 26, at 1; Basinghall-street. *Off. Ass.* Graham. *Sol.* J. R. Chidley, 25, Old Jewry, London. *Pet.* Feb. 14.

BANKRUPTCY ANNULLED.

FRIDAY, Feb. 15, 1861.

CORNELL, CHARLES, Merchant, Rochester, and of Melbourne, Victoria, trading at Rochester (Cornell & Son), and at Melbourne as Cornell Brothers. Sept. 26.

MEETINGS FOR PROOF OF DEBTS.

TUESDAY, Feb. 12, 1861.

BROADBRIDGE, JAMES, Grocer & Chinaman, Arundel, Sussex. March 6, at 12.30; Basinghall-street.—BROWN, ROBERT, Brewer, Maltster, & Hop Merchant, Great Driffield, Yorkshire. March 20, at 12; Kingston-upon-Hull.—FRANCIS, CHARLES JAMES, & HENRY FREER, Wine, Beer, & Cider Merchants, 15 and 17, Great St. Helen's, London (Francis & Freer). March 6, at 11; Basinghall-street, separate estate of Charles James Francis.—FRANCIS, CHARLES JAMES, & HENRY FREER, same time, separate estate of Henry Freer.—FREESTONE, EDWARD WASON, Milliner & Straw Hat Manufacturer, 11, Clarke's-place, High-street, Islington, Middlesex. March 5, at 11; Basinghall-street.—GREEN, EDMUND FRANCIS, Merchant, 147, Leadenhall-street, London. March 6, at 2; Basinghall-street.—HARRIS, WILLIAM, & WILLIAM WEST, Drapers, Kingston-upon-Hull (William Harris & Co.). March 20, at 12; Kingston-upon-Hull.—HAWKES, JOHN, Builder, Lodge, Hornsey-rise, Hornsey-road, Middlesex. March 8, at 12; Basinghall-street.—JOHNSTON, EDWARD, jun., & THOMAS MANLEY, Sugar Refiners & Merchants, Whitehaven, Cumberland. March 7, at 12; Newcastle-upon-Tyne.—LEWIS, EDWARD, Lithographic Printer & Engraver, 18, Coleman-street, London (Edward Lewis & Co.). March 6, at 11.30; Basinghall-street.—PHILLIPS, SAMUEL SMITH, Bonded Store Keeper & Provision Merchant, Bute-street, Cardiff, Glamorganshire (S. S. Phillips & Co.). March 14, at 11; Bristol.—REES, THOMAS, Ironmonger, Castle Bailey-street, Swansea, Glamorganshire. March 14, at 11; Bristol.—REES, WILLIAM NORTH, Printer & Stationer, 38, Gracechurch-street, London. March 5, at 2; Basinghall-street.—RITCHIE, GEORGE, Grocer, Newcastle-upon-Tyne. March 6, at 11; Newcastle-upon-Tyne.—ROBINSON, GEORGE, Hotel Keeper, Lincoln. March 20, at 12; Kingston-upon-Hull.—STATES, CHARLES, Club-house Keeper & Victualler, Aldershot, Southampton. March 6, at 1; Basinghall-street.—SUMNER, JAMES WILLIAM, Builder, Wray-park, Reigate, Surrey. March 6, at 1; Basinghall-street.—VANES, JOHN HOLES, Tanner & Leather Merchant, Stourport and Dudley, Worcestershire. March 14, at 11: Birmingham.—WHITWORTH, PAUL, Grocer & Flour Dealer, Staleybridge, Cheshire. March 14, at 12; Manchester.—WILKES, CHARLES, Miller, Bloxwich and Tipton, Staffordshire. March 7, at 11; Birmingham.

FRIDAY, Feb. 15, 1861.

ATTWOOD, JESSE, Licensed Victualler, Bull Inn, Newington, near Sittingbourne, Kent. March 8, at 1; Basinghall-street.—ASPINWALL, JOHN HUTCHINSON, Merchant & Commission Agent, 5, Argyle-street, Middlesex. Feb. 28, at 12; Basinghall-street.—BARROW, CHARLES, Jun., Wine & Spirit Merchant, 52, Coleman-street, London. March 8, at 1; Basinghall-street.—BILES, ROBERT, Rope & Twine Manufacturer, 4, Southplace, Upper Grange-road, Bermondsey, Surrey, and 32, Seething-lane, Great Tower-street, London. Feb. 28, at 1.30; Basinghall-street.—BOUND, JOHN, Draper, Hay, Brecon. March 14, at 11; Bristol.—BRENT, WILLIAM, Tanner & Currier, Blue Anchor-road, Bermondsey, Southwark, Surrey, and 14, Wilbourn-terrace, Grange-road, Bermondsey. Feb. 27, at 1; Basinghall-street.—BROAD, JAMES, Coach Ironmonger, 149 & 150, Drury-lane, Middlesex. Feb. 26, at 12; Basinghall-st.—COLLINGBOURNE, HENRY, Ribbon & Trimming Manufacturer, Vauxhall Mills, Foleshill, Coventry. March 11, at 11; Birmingham. COOPER, JOHN, Printer, Bookseller, and Stationer, Great Yarmouth, Norfolk. March 8, at 2; Basinghall-street.—DICKINSON, JOHN GLADWIN, & JOSEPH AUCHTERLONIE CREIGHTON, Collar and Shirt Manufacturers, 39, Aldermanbury, London (Dickinson & Creighton). March 12, at 12; Basinghall-street.—FREEMAN, HENRY, & CHARLES CHARTIER, Licensed Victualers, 73, Cheapside, London. March 8, at 11; Basinghall-street.—GOODSON, BENJAMIN, jun., Farmer, Victualler, and Silk Manufacturer, Little Coggeshall, Essex. Feb. 27, at 1.30; Basinghall-st.—HEDGCOCK, THOMAS, Painter, Plumber, Glazier, & Paper Hanger, 22, Bridge-street, St. Helen's, Lancashire. March 8, at 11; Liverpool.—HILLIAR, WILLIAM, Hotel Keeper, Eastham, Cheshire. March 19, at 11; Liverpool.—LEAH, THOMAS, & LEAH, HERBERT, Merchants, Tower-buildings, Liverpool (Lea Brothers). March 8, at 11; Liverpool.—LENCH, JOHN COPE, Leather Seller, 73, Dale-end, Birmingham. March 11, at 11; Birmingham.—POTTER, HENRY, & HIND, SAMUEL JAMES JOHN, Builders, Sutton, Surrey. March 8, at 11.30; Basinghall-street.—SCAMELL, WILLIAM, Leather Seller, 81, Tottenham Court-road, London. March 8, at 12; Basinghall-street.—SHARP, JAMES, Apothecary, 21, Grosvenor-street West, Eaton-square, London. March 8, at 12; Basinghall-street.—STRONG, WILLIAM, Builder, Merton-road, Wandsworth, Surrey. March 8, at 11.30; Basinghall-street.—WENTWORTH, ARTHUR, & WENTWORTH, THOMAS, Hide and Skin Salesmen and Dealers in Hides and Skins, of the Skin-market, Bermondsey, Surrey (A. & T. Wentworth). March 8, at 2; Basinghall-street.—WOOLLETT, WILLIAM HENRY, & WOOLLETT, JOHN FREDERICK SANFORD, Ship and Insurance Agents and Commission Merchants, 1, Lime-street-square, London (Woollett & Nephew). March 6, at 2; Basinghall-street.

We cannot notice any communication unless accompanied by the name and address of the writer

****Any error or delay occurring in the transmission of this Journal should be immediately communicated to the Publisher.*

THE SOLICITORS' JOURNAL.

LONDON, FEBRUARY 23, 1861.

CURRENT TOPICS.

We desire to call attention to a novel feature of the *Solicitors' Journal*, which we expect will be found useful to our readers. In last week's number, under the head "Public Companies," we gave a list of the Bills in Parliament for new lines of railways in England and Wales (where the standing orders of both Houses of Parliament have been complied with), and also short notes of the reports and meetings of a number of companies; presenting thus at a glance a great deal of information which cannot be found in such a form elsewhere. It will be seen by reference to the same head in our present impression, that our intention is not to confine ourselves to railway companies only. We hope very soon to make this part of the *Solicitors' Journal* so complete as to include all public companies of any importance. But, as at present advised, we purpose restricting ourselves, for the most part, to the two general subdivisions of new companies, and reports of meetings of established ones. We shall be happy to receive suggestions upon the subject, having already had the satisfaction of learning from various quarters that this new feature of the *Journal* meets with general approbation.

The loud complaints which for many years past have been made on the subject of the wholesale adulteration of food induced the Legislature to pass an Act last session for the purpose of putting an end to such practices. But it has been hitherto inoperative, and we fear that while it remains unaltered it is likely to continue so. It depends, in the first place, upon the vestries in London, and upon the town councils in boroughs generally, to appoint an officer for the purpose of enforcing its provisions. If they do not choose to appoint such an officer, the Act must remain a dead letter. It would, no doubt, be competent for private parties to take proceedings on their own account, and possibly some public-spirited individuals may at times be found willing to incur the necessary trouble and expense. But this is a duty which the public at large will not willingly undertake. We would further observe that the Act, even if enforced, is singularly lenient in its provisions, for it only allows of the publication of the offender's name in the newspapers after he has been twice convicted. Lastly, it allows medical drugs and medicines of every kind to be adulterated with impunity. We need not be surprised, therefore, that the Act has created much dissatisfaction, and that it has been denounced at more than one vestry meeting as a piece of clumsy and useless legislation. We trust that it will be now amended, for the necessity of a measure of this kind has been long and universally admitted.

Our attention has been called to an attempt which is being made by some few London firms of solicitors to obtain the business of country firms on lower terms than are consistent with the customary usage of the profession. We abstain from giving any further publicity to the matter than is necessary for the purpose of calling the attention of our readers to it; but we reserve to ourselves the right of offering, at a future time, some observations upon the questions involved in this proceeding. A year or so ago we alluded at some length to an absurd project then afoot, the professed object of which was in effect to do away with the present system of metropolitan agency. That scheme failed altogether, and as ignobly as everybody expected. The new plan appears to be that certain town firms should take upon themselves the task of soliciting country business upon lower terms than custom has hitherto permitted. Our provincial as well as our metropolitan readers may have something to say upon the matter, and our columns will be equally open to both; as our single aim is, what it always has been, the general good of the profession, and not of any one section of it, at the expense of any other.

At the last Yorkshire winter gaol delivery the grand jury made a presentment as to the insufficient scale of costs allowed to prosecutors and witnesses in criminal prosecutions. We are glad to see that this has been followed up by the justices of the West Riding, a deputation from whom had an interview with the Home Secretary on the same subject, on Friday, the 15th instant. In answer to a question put by Mr. Egerton on Thursday evening, Sir G. C. Lewis said that he had not yet been able to arrive at any satisfactory conclusion on the subject; but it is very clear that if the present scale of costs be allowed for a few years longer, the useless formalities of quarter sessions and gaol deliveries, police and prisons, may be dispensed with altogether, and thus a further saving to the country be effected. Everybody now who is injured by, or whose duty it is to detect crime, has an interest in hushing it up, and in allowing the delinquent to escape. It is not very likely that any man who has prosecuted once will prosecute again, or that any witness who has once been at sessions or assizes will go there again, if they can help it; and it requires a very strong professional interest in a policeman who has once been at the assizes to do anything which may require his attendance there a second time. No wonder, then, that criminal justice should now not only be often blind, but also lame and dumb. A very short continuance of the present system is required to reduce her to helpless decrepitude.

The *South Australian Advertiser* of the 26th December last contains the report of a case (*Hayne* v. *Dench*), which has excited great commotion in the colony. The decision, which is one of the Supreme Court, has upset hundreds of titles that had been supposed to be perfectly good under the Torrens' Registration Acts. This misadventure is attributed by Australian journalists to two contradictory causes—one being the faulty construction of the Acts; and the other the misconstruction of them by the Court. It is not our business to decide which of these theories may be correct, as we only advert to the matter to show that grave difficulties have arisen in the working of this attempt to simplify the system of real property by registration of titles. But the case of *Hayne* v. *Dench* has not only thrown discredit upon Torrens' Acts; it has also raised the very important question, whether there is any Court of Appeal in the colony from the decisions of the Supreme Court. The defeated party wished to appeal to the Executive Council, of which Mr. Torrens is a member, and which has hitherto sat as a Court of Appeal; but the counsel for the successful litigant argued that the Executive Council no longer existed, and that the only appeal was to the Privy Council here. The Supreme Court, however, decided against the right to appeal in the present case on other grounds, although one of the judges at the same time said, that he had no hesitation at all in saying that there was no Court of Appeal in the province. From the facts which we have mentioned, it really does not appear that the results of recent South Australian legislation have been so successful as to entitle it to any very high degree of confidence as a model for our imitation.

The Queen has appointed the Duke of Argyll, Lord Kingsdown, Sir George Grey, Bart., Robert Wigram Crawford, Esq., Pearce William Rogers, Esq., William George Anderson, Esq., William Strickland Cookson, Esq., and Edwin Wilkins Field, Esq., to be her Majesty's Commissioners to inquire into the constitution of the accountant-general's department of the Court of Chancery, and the provisions for the custody and management of the funds of the court.

THE RECENT LAW EXAMINATION.

The result of the last examination of articled clerks has been hardly less surprising to the professional public, than to the twenty-eight young gentlemen who were unfortunate enough to be *plucked*. Although there are no statistical returns showing the averages of unsuccessful candidates for university degrees—which may be considered in many respects analogous to the certificates of the Incorporated Law Society—some acquaintance with the subject enables us to say that, at the universities, nothing approaching an average of 25 per cent. of rejected candidates has ever been known. At the recent examination in Chancery-lane, 28 out of 105 articled clerks failed to pass. With one or two exceptions, this is the highest proportion of failures recorded at the Law Institution. The fact itself requires explanation; and as it falls peculiarly within our province, we desire to offer some observations upon it.

The first thought that strikes the mind of an inquirer is, that a solution of the question can only be found in one of two directions. Either the examination, or the persons examined, must have been at fault. If we assume that the former was a fair test of what is required of legal practitioners, then the number of those who failed in meeting it proves either that the profession of the law is vastly more difficult than any other calling in life, or that the class of persons who become articled clerks are relatively less fit than any other class of students for the professions which they have respectively chosen—a conclusion which no one will entertain for a moment. But although, in respect of natural ability and general education, articled clerks are as well fitted as any other class of students for their intended profession; yet the question remains, whether—taking the examinations to be only the fair and requisite test of competency—the preliminary training is sufficient to enable candidates of ordinary industry and ability so to prepare themselves as to ensure a reasonable certainty of passing? Upon the other hand, it is to be considered whether the examination is precisely what it ought to be; whether the questions are generally such as that inability to answer them would be just ground of exclusion from the profession; whether, in short, those who exhibit a moderate acquaintance with the subjects to which the questions relate, and no others, ought to be admitted to the practice of a lawyer?

We have assumed that no adequate explanation can be found in the general character of the class of articled clerks. Perhaps we need hardly call this an assumption; for it is well known that as a body, they are characterized by good education and more than usual intelligence. Not a few of them are young men fresh from the public schools or the universities; and most of them are selected for the profession of the law, because, in the opinion of their friends at all events, they are persons of more than ordinary capacity and acuteness. It is obvious, therefore, that either the examination is not a proper test, or that these young men have not a fair opportunity of preparing themselves for it. We have long been of the opinion that both these statements are correct. If then the Incorporated Law Society desires to adopt any remedy, we would urge upon that body the importance of attending to *both* the considerations to which we have just now been adverting.

In the first place, we say that the examinations themselves are not what they ought to be. They are frequently such as would be very troublesome to competent lawyers, while to a great extent they are promotive of the system of *cramming*. By this process alone can any student hope to be prepared for a large number of the questions ordinarily to be found in the papers; while one who has been successfully crammed, and who therefore passes even with eclat, may nevertheless be but poorly qualified to discharge the duties incidental to the practice of a lawyer. Turning for a moment to the questions of Hilary Term, we find that there were only fourteen devoted to conveyancing. Of these the first three referred to Lord Cranworth's and Lord St. Leonards' Acts of last session; the fourth involved a point on which the authorities are extremely conflicting and unsatisfactory; and of the remainder we can only say that to our minds they would be better calculated for an examination of conveyancing counsel to the Court of Chancery than of young men desiring to become solicitors. We have no hesitation in asserting that there are many practitioners in large business, and not a few respectable conveyancers in Lincoln's-inn, who would find some difficulty in giving satisfactory off-hand opinions upon the questions put by the examiner on conveyancing last Hilary Term. They are, no doubt, very ingenious, and well fitted to probe and exhaust the information of advanced lawyers, whose minds are conversant with the particular topics touched upon. All that we contend for is, that they were not suitable under the circumstances. It is unreasonable to expect that articled clerks should be able to handle even in a passable manner some of the most difficult problems of real property law. On the other hand, a good *Coach* would have no great difficulty, if you give him time enough, to prepare his pupils so as to be able to pass through such an ordeal; although probably he would not pretend that they would be, in fact, much the better for it. If this be so, an examination of this kind is faulty, not only in aiming too high, but also in not reaching sufficiently low. Young men who, by artificial training, could be coached so as to answer these abstruse questions might likely enough be but poor hands in drawing a simple will or deed: the contrary also—namely, that those who could not pass such an examination might nevertheless be competent for ordinary practice—is equally true. Upon these grounds we cannot help being of opinion that the examinations in Chancery-lane are not always a fair test of the practical capacity of articled clerks; and that this fact goes far to account for the number of men who were last term sent back disconsolate from the Hall of the Law Society.

We do not wish, however, to be considered as suggesting that any mere change in the subjects or method of the examination will sufficiently meet the evil complained of. There cannot be a greater mistake than to suppose that any single examination is sufficient—unless indeed it be far too severe—to ascertain the competency of candidates for any profession. There ought at least to be some preliminary test, or matriculation, without which the student would not be permitted authoritatively to enter upon his course of study. Such an arrangement would not only ensure the advantage of having the same starting point for the whole body, and of excluding those who were manifestly unfit; but it would enable the authorities to restrict their subsequent examinations to certain branches of the law, a moderate acquaintance with any one of which would be no contemptible attainment for a young man during his articles. We have the sanction of the greatest name for saying that sound knowledge is to be acquired only *gradatim et continenter*. It is too much to expect that young students can learn all that is required of them in a few months before the examination, or remember with sufficient dis-

tinctness what they had read some years before. There ought, then, to be not only a compulsory entrance examination, but at least, two other examinations during articles, which might, however, be of a less formal and rigid character. Students would then be able to pass in different departments of the law at different periods, and so to obtain a sounder and more general acquaintance with its entire domain.

The English Law of Domicil.

(By OLIVER STEPHEN ROUND, Esq., of Lincoln's-inn, *Barrister-at-law.*

VI. (*Continued*).

COMPULSORY DOMICIL.

The case of an exile, or in our parlance a transported convict, would be different from the case of a servant travelling with his master, because, although only exiled his native country for a specified term, he might be transported to such a distance, and under such circumstances, as to render it morally impossible, having regard to his age, health, means, &c., that he should ever return. This, I apprehend, would seriously affect the question of his domicil, for the mere *animus revertendi*, however strong, would be entirely neutralized by such a state of things, and I know of no case which goes so far as to decide in direct terms that the domicil of origin in such a case would not be entirely lost: upon principle, I think it would.* Transportation, we know, is often followed by imprisonment also, in the distant colony to which the convict is transported, and in like manner a convict, though transported by sentence, is frequently retained in this country and kept in durance instead; but there is one consideration which is now of considerable importance, as it is a new element in this branch of legislation; namely, the tickets of leave which are so constantly and commonly granted to those under sentence, supposing their conduct has been thought to deserve such a remission of the punishment. This, of course, would very much assist the idea of the existence of the *animus revertendi*, and it would therefore take strong circumstances to counterbalance its influence, and allow this *animus* to be displaced, and its room filled by the *animus manendi*. In the case of imprisonment in a penal colony, slight provocation, a thing which would otherwise be little more than a fault, is elevated upon the top, as it were, of former transgressions, and the unfortunate being who is transferred to the mines of Port Arthur has little to hope for the future. The word "exile" is not exactly ours, because it rather belongs to the government of an autocracy, but as it is usually for life it has been considered to deprive the party exiled of his domicil of origin, *Denisart, Domiciles*, 3. In the case of *Duncan* v. *Cannan*, 24 L. J. N. S. Chanc. 460, it was laid down in argument and confirmed by the decision of the Court, that questions of personal capacity in cases of minority, coverture, &c., were governed by the law of the actual domicil at the time when any dealing with the property was attempted, and not by that of the contract of acquisition; and this rule has been applied to a wife's equity to a settlement. In all these cases any particular law may by contract be substituted for that which would otherwise govern; Story, "Confl. of Laws," ss. 66, 69, 101, 102, 136, 141; *Gambier* v. *Gambier*, 7 Sim. 263, and 4 L. J. N. S. Ch. 81; *Foubert* v. *Turst*, 1 Brp. P. C. 129; *Lashley* v. *Hogg*, Rob. Pers. Succ. 414, 426; *Gulpratte* v. *Young*, 4 De Gex. & Sm. 217; Frazer, on "Per. and Domest. Relat.," 1—417; *Brandon* v. *Brandon*, 3 Swanst. 312. *Lord Justice Knight Bruce*, in the case above referred to (*Duncan* v. *Cannan*) observed, that the domicil at the time of the contract and at the time of the marriage, might be material, not so the subsequent domicil.

Amongst the cases of compulsory domicil those of a student and an emigrant are usually and not improperly classed. The former of these can hardly be considered as necessary to comment upon, inasmuch as a student can only be such for a very brief period, extending to a year or two at the most, and generally in this country, and even where, as is not uncommon, young men are sent to foreign seminaries or universities, they do not thereby lose their original domicil, because there must always be the strongest presumption that they will return to their native country when the purpose for which they left it is answered. The case of an emigrant is somewhat different, as of course, a man may leave his native country and settle in another in such a manner as to lose his native domicil and acquire a foreign one; but in the case of enforced emigration, of course the domicil of origin is not thereby necessarily lost. *De Bonneval* v. *De Bonneval*, 1 Curt. Eccl. Rep. 856.

The only other case of compulsory domicil is that of a lunatic, which I proceed to consider. Lunatics are of two kinds, those who have always been so, either as idiots or violently insane persons, and those who have suddenly become so. It may be that in the former case, up to a certain point, although totally incapable of managing their affairs persons of weak intellect have still filled some sort of *status*, legally speaking, because there has been no inquisition found respecting them, and I apprehend if any such died, without inquisition found, inasmuch as their property could be inherited, the ordinary principles would apply with respect to them, as in the case of a sane person. The moment, however, the law takes cognizance of them, and some person is appointed as a medium to deal with, they are in the same position as any other party under disability, and the domicil of the committee would be theirs, in the same manner as the domicil of a guardian would be that of his ward, or of a husband that of his wife. The 108th article of the *Code Civile* uses the word *tuteur*, signifying very much the same thing as our *tutor*, that is, one to guard or render the object of his care *safe* (from *tutus*). There is a very early case on this subject, which is referred to in Robertson, on "Personal Succession," pp. 113 and 114, and also in Doctor Phillimore's Treatise on Domicil. This is found in the *Dictionary of Decisions* for 1813, by *Lord Elchies*; art. "Idiotry and Furiosity," No. 2; also, same volume, notes 199, 1749, June 21, where we have the following case:—*George Morison, lunatic, and Walter Bain, and Penelope, his wife, committee of his estate, and John Hamilton their factor* v. *The Earl of Sutherland*. A man by inquisition being found in England lunatic, thereupon a commission of lunacy was given by the Court of Chancery, and the committee of his estate, having suit for the debt owing the lunatic in Scotland, it was objected that a commission by the Lord Chancellor of England out of the Court of Chancery could give no title to sue in Scotland, and the committee after advising with counsel in England, finding that an idiot's tutor appointed in Scotland could not on that title maintain an action in England, and being therefore doubtful that the law might be found the same in Scotland applied to the Chancellor for leave to take a letter of attorney for the lunatic, which having got, he insisted on both titles; but the Court found that neither of them was a sufficient title to carry on the suit. Reversed by the House of Lords 13th February, 1750, and the title to give action in the appellant Morison's name. The Chancellor thought the objection to the first suit well founded, and that a committee in England could not sue in Scotland, but that yet the lunatic might sue in his own name, and that though the

* Perhaps the increasing facilities of communication with our penal colonies, and the fact that so many now never leave this country *at all*, might greatly modify this proposition.

first suit was brought in the name of the committee, as if a lunatic, which they could not do in Scotland when the suit was afterwards brought in the lunatic's own, which could take no notice of his lunacy unless a brieve (inquisition) had issued (supposing he had been found furious), if they did take notice of it, it could only be as lunatic at large which could not bar a suit in his name, and that the union made no difference, for that the law would be the same in England. At page 199 of the notes is the following:—1st. Inquisition in England is no legal evidence in Scotland. 2ndly. If it was, the *Lord Chancellor* has no power to direct the management of an estate of his in Scotland, because *extra territorium:* answered that *statuta personalia voce domicilii* must bind everywhere. A lunatic or fatuous person or minor or married person who is held so there must be held so everywhere. Moveable *sequuntur personam*, and are regulated by the law of the place of domicile. Replied: *statuta* even *personalia* have no force *extra territorium* if it is not *ex comitate*. A man is major (*i.e.* of age) in Naples at eighteen, but if he had an estate in Scotland he could not dispose of it to the second in succession to moveables in Scotland, as ruled by the law of Scotland wherever the owner dies. Witness the case of *Duncan's executors*, same vol., tit. Succession, No. 4, 1738, February 16. The debts must be regulated by the law of the place where they must be sued.

Duncan's executors was this case. The nearest of kin of Adam Duncan competing the Lords thought that the succession to moveables and debts in Scotland and the office of executor must be regulated by the law of Scotland, and not by the law of the place where the deceased proprietor had his residence and died. They did not decide the point, but Adam Duncan who had his residence forty years in Holland having died there, the commissaries of Edinburgh preferred (as the Scotch term it) James and Ann Duncan, his brother and sister, to the office of executors. His nephews and nieces by other brothers and sisters presented an advocation upon iniquity (that is put in their claim), for that by the law of Scotland they, *jure representationis*, had an equal right in the succession of the moveables as well as heritage. The Lords refused the bill, reserving to them to be afterwards heard upon their right to the succession of accords, and gave their opinion as above. It will be seen that the above cases refer chiefly to the question of jurisdiction which determines the *domicil*, and there are observations incidentally mingled with the facts and details, clearly showing the light in which a lunatic's *status* was regarded in Scotland. The *Lord Chancellor's* opinion was, that a lunatic might sue in his own name where his committee could not, by reason of the non-extent of the jurisdiction; but this was an enunciation of English law, as evidently appears by the next sentence; for it is stated in express terms that a lunatic, found what is called "furious," could not sue; but that if at large, his being lunatic as a mere fact was not sufficient to bar any suit by him;' in other words, as I said at the beginning, the same principles apply to a lunatic before he is legally found so, as apply to a sane person not under any disability; for, in common parlance, we must bring a man within the pale of the law before the law can touch him. There is also a most important sentence at the conclusion of the case, namely, "and that the union made no difference, for that the law would be *the same in England.*" In the same case as set forth in *Lord Elchies'* notes we are favoured with the heads of arguments, after stating the two propositions which he considered as laid down in the case, namely, that inquisition in England was no legal evidence (of lunacy) in Scotland, and secondly, if it was, the *Lord Chancellor* had no power to direct the management of such lunatic's estate in Scotland, because *extra territorium*, that is he had not the jurisdiction. The arguments were these; that the laws relating to personalty in the place of domicil must bind everywhere, and therefore that a lunatic or indeed any person so regarded in the place of his domicil must be taken to fill that character everywhere, and the incidents must follow. The reason given is that moveables *sequuntur personam*, and are regulated by the law of the place of domicil. This was denied on the ground that moveables were regulated by the law of Scotland wherever the owner dies (which would of course include a domicil), and in proof of this the case of *Duncan's executors* given above was referred to, which certainly appears so to decide. It is almost unnecessary to say that this is just the contrary to the law of England, and goes upon the principle that debts must be regulated by the law of the land where they must be recovered. Other instances, perhaps, of domicils *not* of choice, might be adduced, but it is scarcely necessary to refer particularly to them, because, as I have so often said, the principles, once known, we have nothing to do but to apply them. Thus a person having a temporary residence does not lose his domicil of origin or that which he before possessed; whereas the taking up a permanent sojourn immediately confers one, and this applies to clerical as well as lay persons, and the distinction between a curate and a beneficed clergyman is immediately apparent; a bishop in his palace and a clergyman in his living stand on the same footing, and though each may have translation or further preferment, the domicil acquired is not lost until another be gained, and in all cases where the *sedes* is, there will the domicil be likewise. With regard to those of the clerical profession also, there is this simplifying circumstance, namely, that their movements are usually within the English territory, except in the case of Scotch church as given to English clergymen or *vice versâ* or colonial bishoprics. There of course, the actual acceptance of the preferment followed by the act of going to and taking possession of it, would, I think there is no doubt, operate as a loss of one domicil and the acquirement of another, and it is no proof of the fallacy of this assertion to say that there is the chance of a further and better piece of preferment, inducing the party immediately to leave the domicil so acquired and obtain perhaps a new one; for in the case supposed there are all the elements necessary, and we look no further, whatever else may take place, to alter the domicil, being in the balance as the uncertain future against the certain present.

(*To be Continued*).

The Courts, Appointments, Promotions, Vacancies, &c.

COURT OF CHANCERY.

(Before Vice-Chancellor Sir R. T. Kindersley.)

Feb. 15.—*In re Smith.*—This was a petition, and raised the important question whether a solicitor, who had formerly acted in a suit, but who had been removed by an order to change solicitors, was disentitled, on the mere ground of delay, which it was alleged there had been, in the prosecution of the suit, to his lien for costs. Several solicitors had been employed in the suit, and the right to costs of the last solicitor had been assigned to the petitioner, and the petition was presented to establish his lien for costs up to the time when solicitors were changed.

The Vice-Chancellor was of opinion that the petitioner was entitled to what he asked. It was not a universal rule that unless a solicitor prosecuted a cause to a decree, he was not entitled to have his costs, properly incurred. If, indeed, at an imminent or inconvenient time he deserted his client, and loss was incurred, that might be a ground to disentitle him to costs.

SPRING ASSIZES.—NORTHERN CIRCUIT.

Lancaster.

This Circuit commenced on Saturday, the 16th inst. The learned judges, Mr. Justice Hill and Mr. Justice Keating, arrived here on Saturday afternoon, and opened the commission. Their lordships attended Divine Service on Sunday at the parish church.

Feb. 18.—This morning Mr. Justice Hill charged the grand jury in the Criminal Court, and Mr. Justice Keating took his seat on the Civil side.

The cause list contained an entry and four causes, of which two were marked for special juries.

Crown Court.

(Before Mr. Justice Hill.)

Owing to the delay on the part of the grand jury in bringing in the bills, it was 3 o'clock before his lordship was able to try any prisoner.

MIDDLESEX SESSIONS.

Feb. 18.—The February adjourned sessions commenced this morning, at Clerkenwell, before Mr. W. H. Bodkin, assistant-judge; Mr. Payne, deputy; and a full bench of magistrates. The calendar was heavier than usual.

Second Court.

(Before Mr. Payne.)

Feb. 20.—The grand jury was discharged about mid-day.

The Assistant-Judge in his address to them said, he had long been of opinion, and had frequently expressed it, that the attendance of grand juries at the metropolitan courts had become entirely useless. The cases which were submitted to them were almost without an exception cases which had been previously investigated by the magistrates of the police-courts in their several districts,—gentlemen of great legal knowledge and experience, who, having found that a *primâ facie* case had been established before them, sent the person accused for trial, and the grand jury was scarcely called upon to say whether they concurred in the judgment the magistrates had arrived at.

Mr. J. Fraser Macqueen has, in consequence of his elevation to the rank of Queen's Counsel, resigned his appointment as Revising Barrister for the metropolitan boroughs and the city of Westminster. The other two metropolitan revising barristerships are by the deaths of Mr. Lancelot Shadwell and Mr. Young Mc Christie, also vacant. These appointments are in the gift of the Lord Chief Justice, and are the only revising barristerships given to the chancery bar.

Shortly after the commencement of business in the Marylebone Police-court on Thursday, it was rumoured that Mr. Secker, who for many weeks had been unable to perform his duty owing to indisposition, had expired. His colleague, Mr. Mansfield, upon receiving the information, directed Burrage, one of the warrant officers, to proceed at once to Mr. Secker's chambers, Essex-court, Temple, to ascertain whether the rumour was correct or not. He did so, and on his return stated that the much lamented gentleman expired at half-past five o'clock on the previous morning. It is a remarkable circumstance that within the last eight or nine months death has claimed no fewer than three of the Marylebone magistrates, viz., Mr. Broughton, Mr. Hammill, and the one whose dissolution we have now the sad duty to record.

The following gentlemen have been appointed Queen's Counsel:—Mr. William Dugmore, Mr. W. A. Collins, Mr. A. Cleasby, Mr. H. W. Cole, Mr. John Fraser Macqueen, Mr. Thomas Chambers, Mr. E. Plumer Price, Mr. Josiah W. Smith, Mr. Richard Baggallay, Mr. Henry Mills, Hon. Adolphus F. O. Liddell, Mr. W. Baliol Brett, Mr. John Burgess Karslake, Mr. W. Digby Seymour, Mr. John Duke Coleridge; Hon. George Denman, and Mr. George Mellish. A patent of precedence has been conferred on Mr. Serjeant Hayes.

John Forster, Esq., Barrister-at-Law, late Secretary to the Commission, has been appointed a Commissioner in Lunacy; on the resignation of Bryan Waller Procter, Esq.

Mr. John Robert Griffith, of Llanrwst, Denbigh, has been appointed a commissioner to administer oaths in the High Court of Chancery.

Mr. John Leach, of Martock, Somerset, has been appointed perpetual commissioner for taking the acknowledgments of deeds by married women for the county of Somerset.

Parliament and Legislation.

HOUSE OF LORDS.

Friday, Feb. 15.

The Concentration of the Law Courts.

(*Continued from last week.*)

Lord St. Leonards: The question was whether their lordships would sanction the taking the sum of £1,400,000 belonging to suitors, for courts which they did not require. Some of the judges were sufficiently accommodated. The only accommodation required was for the two new Vice-Chancellors. The Society of Lincoln's Inn would build new courts at an expense to themselves of £100,000.

The Lord Chancellor: The suitors fee fund now amounted to about two millions and a half, and might properly be applied for the purpose required.

Lord Cranworth disagreed with the views entertained by Lord St. Leonards.

Monday, Feb. 18.

Constructive Notice Amendment Bill.

On the motion of Lord St. Leonards, this Bill was read a second time.

Court of Divorce.

The Lord Chancellor gave notice that on an early day he should move for a select committee to inquire into the law affecting the parties entitled to sue in the Divorce Court or the Sessions Court of Scotland for a dissolution of marriage.

Thursday, Feb. 21.

Indictable Offences (Metropolitan District) Bill.

This Bill was read a third time and passed.

Constructive Notices Amendment Bill.

This Bill was read a third time and passed.

HOUSE OF COMMONS.

Friday, Feb. 15.

The New Law Courts.

Mr. Cowper (in answer to Sir J. Shelley) stated that a Bill was in preparation for purchasing the site on which the new courts of law were to be erected. He hoped to be able to introduce the measure shortly.

Mr. Turnbull's Case.

Mr. Stirling moved an address for a copy of all letters and minutes which have passed between the Government and the Master of the Rolls relative to Mr. Turnbull's appointment and resignation; together with all such letters and minutes as relate to the regulations under which the work of calendaring is pursued, and the means taken for securing the integrity of the public papers.

Agreed to.

Monday, Feb. 18.

Bankruptcy and Insolvency Bill.

The House went into committee on this Bill.

The clauses as to salaries having been agreed to in committee the House went into committee on the Bill itself.

After some discussion the clause appointing a chief judge was agreed to. During the discussion Mr. Henley observed that as the Master of the Rolls and Vice Chancellors appeared to have little to do, the functions of the chief judge might be performed by one of those judges. The Attorney-General explained the present position of the equity courts, and stated that the manifold duties of the new judge would require all his time.

The clauses down to the 49th, excepting two or three which were postponed, were agreed to. On arriving at the 50th clause the chairman was ordered to report progress.

Highways Bill.

The order for the second reading of this Bill was postponed till Friday.

Tuesday, Feb. 19.

Real Property.

Mr. W. Williams moved a resolution. "That in the opinion of this House, real property should be made to pay the same probate duty as that now payable on personal property." He stated at some length his reasons why the distinction at present existing between the two classes of property should no longer continue.

Mr. HADFIELD seconded the motion.

The CHANCELLOR OF THE EXCHEQUER opposed the motion, and said his views upon the subject were entirely opposite to those of Mr. Williams. The proposition was neither just nor practicable. The adoption of the motion would lead to a greater anomaly than that it proposed to rectify. To get one per cent. on land it would cost two or three per cent. to obtain a valuation of it. According to the best estimate that can be obtained, four-fifths of the land of this country is under settlement and entail, and the greater portion of it would escape the proposed probate duty.

Mr. WILLIAMS having replied, the House divided, and the numbers were:—

For the motion	...	...	...	51
Against it	...	...	...	167
Majority	...	...	...	116

BANKRUPTCY AND INSOLVENCY.

The report of the committee on this Bill was brought up and agreed to.

Thursday, Feb. 21.

ALLOWANCES TO WITNESSES.

Mr. A. EGERTON asked the Secretary of State for the Home Department whether he was prepared to alter the present scale of allowances to witnesses at sessions and assizes.

Sir G. C. LEWIS said, he had received deputations from South Lancashire and the West Riding composed of gentlemen of great weight and experience in their own counties, whose object was to represent the inadequacy of the present allowances to witnesses at assizes and sessions. These expenses, however, were defrayed by a grant of that House, and any increase in the allowance would fall as a burden on the public exchequer. The subject was one of great difficulty, whether considered as leading to a general increase of allowances, or to a variable scale involving different rates in different counties, and he could not say that he had been able yet to arrive at any satisfactory conclusion.

BANKRUPTCY AND INSOLVENCY BILL.

The House having resolved itself into committee resumed the consideration of the clauses of this Bill. Clauses 50 to 80 inclusive were agreed to with some slight amendments.

Clause 81, which abolishes the distinction between traders and non-traders was, after some discussion, agreed to.

Clause 82, which assimilates the law applicable to the two classes of debtors, gave rise to considerable discussion, in which Sir H. Cairns, Sir G. Bowyer, Mr. Malins, Mr. E. James, Sir F. Kelly, Mr. Walpole, Mr. Rolt, and the Attorney-General took part. The clause was eventually agreed to.

On reaching the 117th clause, which was agreed to, the chairman was ordered to report progress.

PENDING MEASURES OF LEGISLATION.

A BILL TO AMEND THE LAW RELATING TO BANKRUPTCY AND INSOLVENCY IN ENGLAND.

The Court of Bankruptcy to have for the purposes of this Act same jurisdiction as superior courts of law and equity, and court of insolvency.

A chief judge to be appointed.

Present commissioners to continue. Vacancy in number of commissioners not to be filled up until number reduced to less than three.

County court judges, except of the metropolitan courts, to have same jurisdiction as district commissioners.

Where no district commissioner business may be transferred to county court of district.

Power to her Majesty by order to establish additional county courts, and to re-arrange districts of bankruptcy and county courts.

Judge of new county court to be appointed by Lord Chancellor; powers of new county court judge.

Officers.

Persons now discharging the duties of chief registrar, registrars, taxing-master and official assignees to retain office subject to dismissal by Lord Chancellor. Vacancies to be filled up by Lord Chancellor. (s. 11.)

Registrar's office in Quality Court to be discontinued, and clerks and records transferred to the office of chief registrar.

County court registrars also to discharge duties of official assignees.

Bailiffs of county courts to discharge duties of messengers.

Accountant.

Office to be abolished on first vacancy, and duties discharged by chief registrar, and funds in bank to credit of such accountant to be transferred as may be directed by general order.

Taxing-Master.

To tax bills, &c., in matters before court of appeal and the court in London, and bills specially referred from district and county courts. Subject to review. (s. 18.)

Registrar in country districts to be taxing-officer.

Bills &c., of auctioneers, appraisers, valuers and accountants to be settled by registrar of court in which they arise. Subject to review.

Official Assignees.

Vacancies in office in London not to be filled up unless number reduced to less than five. Vacancy in office in country not to be filled up if another official assignee in district.

Messengers.

Messengers in London to continue to act. Vacancies in London not to be filled up unless number reduced to two, and in country to one. Where necessary to be filled up by Lord Chancellor.

Vacancies and Temporary Appointments

Vacancies in offices of commissioner or registrar or otherwise need not be filled up.

Insolvent Debtors Court.

Court abolished and commissioners released, and jurisdiction of county courts discontinued. (S. S. 24 & 25.)

Provisional Assignees.

Present provisional assignee to act as official assignee of court in London. To receive same salary as other official assignees.

Officers.

Chief clerks and taxing-officers transferred to London court.

Pending Business.

Returns of business pending in court to be made by chief clerk before Act comes into operation. Lord Chancellor may order business to be completed by commissioners.

Court may proceed summarily in winding up business.

Recognizances of sureties for insolvents extended.

Funds.

Funds standing to credit of court to be transferred to accountant in bankruptcy subject to payment of dividends and salaries, and for indemnifying provisional assignee.

Salaries of Judges and Officers under this Bill.

Chief judge, £5,000; secretary £300, payable out of the Consolidated Fund.

Chief Commissioner of Insolvent Court, present salary continued for life (s. 34).

Chief registrar, £1,400; London registrars, £1,200; country registrars, £1,000; registrar in attendance upon chief judge, £1,000; taxing master, £1,400; accountant in bankruptcy, £1,500; registrar of meetings, £200; other officers of court, same salaries as at present.

Clerks of Insolvent Court, transferred, same salary as at present (ss. 34—36).

Remuneration of Official Assignees.

Of official assignee in London, not to exceed £1,200 per of official assignee in the country £1,000.

Remuneration of Messengers.

Not to exceed £500, per annum, in London; nor £400 in the country. Surplus of receipts by messengers to be paid over to chief registrar's account.

As to Retiring Annuities and Compensation.

Chief judge, after 15 years service or previous disability, two-thirds of salary, to be charged on Consolidated Fund.

Commissioner or registrar, accountant in bankruptcy or taxing master, or other officer, after 20 years' service, or previous disability, two-thirds of salary. Time of service in Insolvent Court to be reckoned.

Where annuitant accepts other public office, salary received to be deducted from annuity.

Compensations now payable on certain abolished offices and annuities, and other expenses, charged on fund standing to chief registrar's account to continue charged on same fund (ss. 39—43).

As to Fees and Stamps.

Court fee on public sittings and per centage on estates, abolished.

Fees may be directed to be paid and altered by general orders. All fees to be paid by stamps.

Documents, &c., mentioned in schedule to be on stamped vellum as mentioned in schedule.

Documents, &c., not to be received unless so impressed (ss. 44—49).

Sittings of the Court.

Courts to sit every day except days mentioned. During absence of chief judge, from illness or otherwise, Lord Chancellor may authorise any vice-chancellors, or any judge of common law courts, or any commissioner in London to act as judge.

Chief judge to regulate sittings in vacation.

As to the Practice and Procedure of the Court.

Evidence may be taken orally, by interrogatories or affidavit, or by commission abroad.

Chief judge and commissioners to sit at chambers, and to have same jurisdiction as when sitting in court. Chief judge may direct any matter not being an appeal or rehearing to be heard by commissioners in London.

Registrars to sit in chambers for disposal of business.

Any party may take opinion of judge upon any matter certified by registrar. Certificate of registrar to be binding on all parties.

Parties and witnesses summoned before registrar to be liable for contempt in not attending. False swearing before registrar punishable as perjury.

Expenses to be settled by court and paid out of the estate, and if assets insufficient, then out of chief registrar's account. Registrars may exercise all powers but that of commitment.

Chief judge and judges of court of appeal may direct questions of fact to be tried before himself and themselves, and make orders on sheriff accordingly and may direct issues to courts of common law.

Short-hand writers may be appointed to facilitate business. Remuneration to be settled by general order.

Appeals.

Decision or order of London or country commissioner or county court judge may be appealed.

Appeal to be by petition, motion, or special case. No new evidence to be received on appeal. Appeal to be presented within twenty-eight days unless further time allowed by court below. Order on appeal to be final unless appeal permitted by chief judge.

On hearing chief judge may direct removal of proceedings from court appealed from to some other court.

Chief judge may request assistance of common law judges.

Decisions of chief judge subject to appeal (except decisions on appeal to him) within seventy days. Decision of appeal court final unless appeal sanctioned to House of Lords.

Buildings.

The buildings in Basinghall-street and Portugal-street to vest in commissioners of public works.

Persons subject to the Act.

All debtors, whether traders or not, may be adjudged bankrupt.

A non-trader who shall, to defeat his creditors, depart the realm, or remain abroad, or make a fraudulent conveyance of his estate, is to be deemed to have committed an act of bankruptcy.

The following rules to be observed with respect to non-trader departing the realm, viz.:—

1. The Court, upon satisfactory evidence, to order copy of petition to be served on him.
2. Order is to limit time for appearance.
3. If place of abode cannot be ascertained, petition may be served at last known place of residence, and not less than sixty days to be given from time of service for hearing.
4. After expiration of sixty days, if debtor does not appear, he may be adjudged bankrupt.

Lying in prison for fourteen days, escaping out of prison, and filing a declaration of insolvency, to be deemed acts of bankruptcy.

Trader debtor suffering execution to be levied for demand exceeding £50, to be deemed to have committed act of bankruptcy. If petition for adjudication not presented in meantime, sheriff may proceed with execution.

Goods taken in execution to be sold by auction.

Filing a declaration of insolvency in foreign dominions of the Crown to be conclusive evidence of bankruptcy. Creditor after two months' notice in *London Gazette* may petition for adjudication (ss. 81—87).

As to Act of Bankruptcy by Non-payment after Judgment Debtor Summons.

Creditor entitled at the end of one week after signing judgment to sue out judgment debtor summons.

Creditor entitled to sue out summons where debtor has disobeyed order of court of equity, or in bankruptcy, insolvency, or lunacy, directing payment.

Judgment debtor summons to issue according to the following rules, viz.:—Where debtor in England and debt amounts to £50, out of court in district where debtor usually lives; where debtor is not in England, then out of court in district where debtor last resided.

Summons to be served personally when debtor in England, except otherwise ordered; where debtor not in England as court may order.

Duplicate summons to be delivered to sheriff.

Where service cannot be personally made, court may order notices to be inserted in *Gazette* and newspapers fixing time for debtor to appear.

Upon appearance debtor may be examined on oath, and to make discovery respecting his property. Debtor refusing to be sworn, or to make discovery, may be committed.

If after service of summons or notice thereof, debt not paid or secured, Court may adjudge him bankrupt without petition.

Three days allowed to show cause against adjudication; upon cause shewn adjudication may be annulled; adjudication to become absolute at the end of time allowed, or judgment against cause shown.

Debtor refusing to conform, may be committed, (s.s. 88, 97.)

Non-Traders.

Proceedings to be by petition. After filing of petition bankrupt and his estate subject to law of bankruptcy.

Petition to be filed in court within district where debtor shall have carried on business for six months previous; but Court may order petition to be presented within any district; or may transfer petition to any district or county court.

Amount of petitioning creditors' debts to be as follows:—A single creditor, or two, or more being partners, £50 or upwards; two creditors, £70 or upwards; three, or more creditors, £100 or upwards. Creditors for sums not due, may petition, or join in petitioning.

Debts antecedent to Act shall not support petition for adjudication, against non-trader.

Where bankruptcy fraudulently or maliciously prosecuted, Court may order satisfaction to be made to bankrupt for damages sustained.

Public officer of co-partnership may present petition.

Debtor may himself petition.

Debtor petitioning to file schedule.

Where debtor petitions, and his debts do not exceed £300, if resident in metropolitan district, to file his petition in London Court. Where debts shall exceed £300, and debtor shall not be resident in metropolitan district, petition to be filed in district county court.

Debtor petitioning, if in prison, to give notice to gaoler of his intention.

If creditor does not obtain adjudication in three days, any other creditor may proceed.

In computing debts for the purpose of petition, sums due on mortgage, or other securities, to be reckoned after deducting value of property comprised therein; and interest and costs respecting such debts to be also reckoned.

Proceedings after adjudication, &c.

After adjudication, the official assignee is to take possession of the bankrupt's estate.

Majority in value of creditors may transfer proceedings to county court.

Upon appointment of creditors' assignee, powers of official assignee to cease; the former to audit accounts of the latter; the former to realise estate, except amounts of £10 and under.

Court may determine on all differences between assignees, creditors, or parties claiming under trust deed.

Nothing in Bill as to last examination or proof of debts requires particular notice.

The classification of certificates is to be abolished.

A majority of creditors may resolve after adjudication to wind-up estate out of court under deed of arrangement.

Deeds of arrangement.

Trust deeds for benefit of creditors to be valid if executed by three-fourths in value of them, and by trustees and the debtor's execution thereof attested by a solicitor; possession of the property comprised therein being given up to the trustees; there being also certain formalities of registration, &c.; after registration the Court is to have jurisdiction, and the debtor is to be protected.

The Bill also contains a set of what has been called dead men's clauses, providing for the distribution of the estates of deceased debtors.

There are also numerous clauses relating to evidence, notices, &c.; misdemeanours under the Act, &c.

A BILL INTITULED AN ACT FOR PROMOTING A REVISION OF THE STATUTE LAW BY REPEALING DIVERS ACTS AND PARTS OF ACTS WHICH HAVE CEASED TO BE IN FORCE.

Whereas, with a view to the revision of the statute law, and particularly to the preparation of an edition of the statutes comprising only enactments which are in force, it is expedient that divers Acts and parts of Acts which have ceased to be in force otherwise than by express and specific repeal, should be expressly and specifically repealed: and whereas the Acts mentioned in the schedule to this Act have so ceased to be in force to the extent specified in the third column of the said schedule: be it therefore enacted, &c.

The Acts mentioned in the schedule to this Act shall be repealed to the extent specified in the third column of the said schedule, except as to any operation already effected by, or Act done under, any enactment herein comprised, or as to any right, title, obligation, or liability already acquired or accrued under any such enactment.

There is a prefatory note as follows:—

The object of the notes in the fourth column is to show the grounds of the proposed repeals. Acts of modern date, which have ceased to be in force, without being the subject of express and specific repeal, may be regarded as divisible into—

1. Acts repealed in general terms (for example, by the repeal of "all Acts relating to the Revenue of Customs," as in 7 Geo. 4, c. 48, s. 52).
2. Acts virtually repealed.
3. Acts superseded (where a later Act effects the same purposes as an earlier one, and thus renders the retention of the earlier one useless).
4. Acts expired (that is, Acts which, having been originally temporary, have not been made permanent, or been kept in force by continuance).
5. Acts spent (that is, Acts exhausted or spent in operation at the moment of their first taking effect, or at some specified time, or on the doing of some Act authorised or required).

The present Bill deals only with Acts of the first three classes. Where, however, part of an Act intended to be dealt with in the present Bill is spent or expired, that part has not been excluded from the repeal. At the same time, it has only been considered necessary to show in the fourth column how the remaining parts of the Act are gone. And so, where part of an Act has been already expressly and specifically repealed, that part has not been excluded from the repeal by the present Bill. The fourth column will show how such a previous partial repeal has been effected, as well as how the remaining part of the Act is gone. In consequence of the adoption of this course, the repeals in this Bill are in the great majority of cases of "the whole" of each Act dealt with, instead of being merely repeals of "so much as is not expired," or "spent," or of "so much as is not already repealed." Such a sweeping repeal is convenient for many purposes, and more particularly for simplifying the entries which will have to be made in the revised edition of the statutes, to show how the Acts and parts of Acts omitted are gone.

The fourth column of the schedule (with this note) is intended to be struck out at a late stage of the Bill.

The schedule consists of 103 pages, of which the following entries (being the two first and two last) are by way of specimen:—

SCHEDULE.

Act.	Subject.	Extent of Repeal.	——
11 Geo. 3. c. 32.	Militia Pay -	The whole - -	Repealed by 26 Geo. 3, c. 107, s. 135, in general terms; and the repealing Act is repealed by 42 Geo. 3, c. 90, s. 1, without a saving for repeals.
„ c. 38.	Greenland and Whale Fishery.	The whole - -	Superseded by 31 Geo. 3, c. 43, s. 5.
16&17Vict. c. 125.	Metropolitan Sewers Acts Continuance and Amendment.	The whole - -	Superseded. See 18 & 19 Vict. c. 120, ss. 145 and 181.
19&20Vict. c. 25.	Drafts on Bankers.	The whole - -	Semble, virtually repealed by 21 & 22 Vict. c. 79

Recent Decisions.

REAL PROPERTY AND CONVEYANCING.

CHARGE OF DEBTS—DIRECTION TO PAY DEBTS—IMPLIED POWER OF SALE.

Cook v. *Dawson*, M. R., 9 W. R. 305.

Every decision being important which tends to give stability to a disputed doctrine of law, we return briefly to this subject. A leading proposition laid down by Wood, V.C., in *Hodkinson* v. *Quinn*, 1 Johns. & H., 303; 9 W. R. 198, is this—that where a will contains such a direction to pay debts as amounts to a charge upon the real estate devised, and there is no distinct provision as to the person by whom the debts are to be paid, there is an implied power in the executors to enter into a contract for sale of the estates, whether the persons beneficially interested are concurring or opposing; and, if they resist, the executors can compel those who have the legal estate to join in the conveyance. This decision, which follows that of *Robinson* v. *Lowater*, before the Lords Justices, 5 De G. M. & G. 272, affirming the Master of the Rolls, 17 Beav. 592, has been again judicially acted upon by the Master of the Rolls in *Cook* v. *Dawson*. In this case it was admitted by counsel on both sides that, notwithstanding the doubts which have been expressed by eminent authorities on the question, some statement of which may be found *antè*, p. 259—the principle is now placed beyond dispute.

A no less important point which was strongly contested in *Cook* v. *Dawson* was this—whether the direction to pay debts in that particular case amounted to a charge upon the real estate or not. The direction was that the debts should be "fully paid and satisfied by the executrix"—without specifying out of what fund; and the testator gave to his widow, whom he afterwards appointed his executrix, a life estate in the real property, and "if she found that the net rents and proceeds were inadequate and not sufficient for her proper maintenance and comfort," then a power to mortgage. After her death there was a devise over. The Master of the Rolls laid down the proposition that a general direction by a testator for the payment of his debts, amounts to a charge of his debts upon the real estate, at least where the property is afterwards disposed of by the will. To this rule there is a well-known exception in cases where, coupled with the direction that the debts shall be paid, there is another direction that they shall be paid *by the executor*. It was denied in the course of the argument that this old exception was still the law, but the Master of the Rolls, though with some apparent reluctance, felt bound to support the rule. He said that although he might have entertained doubts upon the question had it come before him for the first time, the doctrine was too firmly established to admit of its being disturbed by him. The direction in such a case must be held to extend only to charge that property which comes to the executor's hands in the ordinary way, viz., the personal estate. But this exception, continued the Master of the Rolls, is open to another exception, in cases where there is a "devise of land" to the executor. In those cases the direction that the debts shall be paid by the executor "does not affect the validity of the general charge of debts upon the real estate." It must be confessed that it is difficult to reconcile this rule with that laid down in *Harris*

v. *Watkins* (Kay, 438); the marginal note of which is this: "When a will contains a direction to the executors to pay the testator's debts, and then a devise of real estate to that executor, it is considered that the testator has imposed upon the executor the duty of paying the debts to the extent of the property given to him, and accordingly *that property* " is held to be charged with the debts," a statement which is fully borne out by the judgment of Vice-Chancellor Wood, at p. 443. Whatever may be the solution of this apparent contradiction, it is to be observed that the decision in *Cook* v. *Dawson* went upon other grounds, viz, that, upon the construction of the will, the executrix took only a life estate in the lands, and that the power to mortgage did not include by implication a power of sale. The two cases which were relied on in favour of the right of the executrix to sell, were *Finch* v. *Hattersley*, 3 Russ. 345 (n), and *Gosling* v. *Carter*, 1 Coll. 644. In both there was a direction that debts should be paid by the executrix, and in both a life estate was given to her. But in the former case, all that appears from the report is a declaration that the real estates ought to be sold, &c., without specifying by whom; and in the second, the life estate given to the executrix was in the whole of the real and personal estate; and there appeared to the Court to be strong evidences of intention, from the wording of the particular will, that she should sell during her lifetime.

The results arrived at in *Cook* v. *Dawson* were these; that the direction above stated amounted to a charge of the debts upon the life estate of the executrix; and, there being no devise of the *corpus* of the real estate to the executrix, that the *corpus* of the real estate was not charged. Consequently the Court held, though with manifest reluctance, that the executrix could not make a good title to a purchaser.

COMMON LAW.

SALE OF GOODS—29 CAR. 2, c. 3, s. 17—WHAT IS A SUFFICIENT MEMORANDUM.

Bailey v. *Sweeting*, 9 W. R., C. P., 273.

We have it upon the authority of Mr. Justice Willes, that the particular question raised in this case has not before been the subject of judicial decision; and yet, if such be the fact, it is strange enough, for the dispute which arose between the parties in the present instance must be of very frequent occurrence. The point for decision may be put shortly thus: "Is the note or memorandum of a contract for the sale of goods for the price of £10 or upwards (required by the 17th section of the statute of frauds) sufficient to enable the vendor to maintain an action for their price, if such memorandum be given subsequently to the time when the sale took place, and if it contains in itself a repudiation of the vendee's liability on such contract?" Mr. Justice Blackburn, in his well-known treatise on the contract of sale, is of opinion that a memorandum containing a repudiation of liability, as well as the terms of the bargain, is *not* such as constitutes a sufficient compliance with the statute. He says (p. 66), that it sometimes happens that after a dispute has arisen, a party in a letter signed by him recapitulates the whole terms of the bargain, for the purpose of saying that the bargain is at an end; and that it has never been decided whether such an admission of the terms of the bargain, signed for the express purpose of repudiation, can be considered a memorandum to make the contract good. He adds, however, that in his own judgment it seems difficult on principle to see how it can be so considered: for the parties may, either of them, put an end to the contract at any time whilst it is not good, with cause or without cause; and a memorandum of the terms comes too late to make a contract good which is already put an end to by the will of one of them. Mr. Justice Blackburn concludes by saying, that he knows of only three cases in which the point could have been decided; and though in each of them the memorandum was held insufficient, yet that they seem all to have been decided on special grounds, irrespective of the question now under discussion. These cases are *Cooper* v. *Smith* (15 East. 103), *Richards* v. *Porter* (6 B. & C. 437), and *Smith* v. *Surman* (9 B. & C. 561); and of these, the first appears to have been decided in favour of the defendant, because the terms of the bargain were not *correctly* stated in the memorandum; the second, because the terms were not *sufficiently* specified; and the third, because they appeared from it to have been left *undecided* between the parties at the time of sale. But, though Mr. Justice Blackburn's opinion upon the point was strongly urged upon the Court in the present case, they decided nevertheless adversely to the defendant; and indeed, in express terms, held the passage above referred to, to be erroneous. "I am bound to say," said Mr. Justice Williams, "that I do not consider the reasons given in my brother Blackburn's book to be sufficient." The particular circumstances of the present case are not perhaps very material with regard to the general proposition of law now under consideration; but it may be mentioned that the question arose out of a sale of some goods which were injured in the carriage, and which the defendant consequently refused by letter to accept; reciting in such his refusal (unfortunately for himself, though probably out of extreme caution) the precise terms of the bargain which he had made with the vendor. This letter the Court held to have a retrospective effect, and thereby to supply the signed memorandum required by the statute, in order to allow the vendor to sue for the price of the goods; and they accordingly directed the verdict to be entered for the plaintiff.

CRIMINAL LAW.

APPROPRIATION OF FOUND GOODS, WHEN IT AMOUNTS TO LARCENY.

Reg. v. *Moore*, 9 W. R., C.C.R., 276.

This is the most recent of a series of cases which point out the fine distinctions which the law draws, in judging of the conduct of him who appropriates to his own use the chattel of another,—which by being accidentally lost, or otherwise, leaves for a time the possession of its owner, and comes into that of the finder. The law upon this subject was far from settled at the date of the last edition of Mr. Russell's well-known treatise upon "Crimes and Misdemeanours." That author (vol. ii. p. 11) says, that where the "taking" of goods from another is by *finding* the property, the crime of larceny is not committed, though there be *animus furandi* in the finder. Several illustrations of this proposition are given, and among them it is said that if one lose his goods in the highway, and another find them and carry them away with all the circumstances that usually prove a felonious intent—as denying or secreting the property—yet as the first taking was lawful, no larceny has been committed. It is true that Mr. Russell goes on to observe that this doctrine must be received with great limitation; and proceeds to give several cases in which the party who found and appropriated the goods of another, was convicted of stealing them: and he finally arrives at the conclusion, that the old rule does not apply, if the finder knows the owner of the property; or if there be any mark, or other circumstances from which the owner can be reasonably ascertained. He adds that in cases of this kind (inasmuch as, after all, the *animus furandi* is the gist of the matter) the jury should be always satisfied that the prisoner intended at the time of offending to convert the article to his own use, for if such intention only came into his mind *subsequently*, before he had an opportunity of restoration to the owner no larceny has been committed. But a chain of cases since the date of the last edition of Mr. Russell's work have now thrown some additional light upon this subject. The first of these was *Thorburn's case* (1 Den., C. C., 387), which expressly recognises the correctness of the qualification engrafted by Mr. Russell upon the ancient rule; and lays it down that, to be guilty of felony, the finder of an article must know who the owner is, or have reasonable means at the time of finding it, of knowing who he is; and this criterion was in effect adopted in the subsequent cases of *The Queen* v. *Preston* (21 L. J., M.C., 41), *The Queen* v. *Dixon* (25 L. J., M. C., 39), and *The Queen* v. *Christopher* (28 L. J., M.C., 35). But the present case shows that the criterion is not in all instances sufficient; for here, at the time the prisoner found the article, he neither knew the owner nor had he reasonable means of knowing who the owner was (for so the jury expressly found, in answer to a question from the judge); but yet inasmuch as he believed at the time of finding that the owner might be found, and intended, nevertheless, to appropriate the property to his own use, whoever the owner might turn out to be—the Court of Criminal Appeal held him to have been rightly convicted of larceny. The prosecutor had come to the prisoner's shop, and had there dropped a £10 note, which the prisoner appropriated and changed forthwith; he took it, intending, when he picked it up, to take it to his own use, and believing that the owner could be found, though without knowing till afterwards who he was; "but," said the Chief Justice, "if that be not larceny, our law would be in a much more defective state than I take it to be."

Correspondence.

MOSE'S CASE.

Under this heading you have in your impression of the 16th inst. made some observations which, so far as they allude to my firm or me, are most unjust. As I had the conduct of the suit in question, and as I have to state my personal conviction in regard to facts of which my partner has no knowledge, I write on my own behalf, and not on that of my firm. Most deplorable as has been the end of poor Mr. Bailey, regard should be had to the statements made to me, upon which alone I could form an opinion. Of the nature and effect of those statements it is evident by your remarks you have been misinformed in several important particulars.

The grandfather of Mose by his will devised and bequeathed freehold, leasehold, and funded property. He may have laboured under a delusion. It was, and still is, my conviction that a grievous wrong was done to Mose's mother, who, under the will, was sole devisee and legatee. You observe that "Bailey expended his money in full expectation of the success of his suit." I pointed out to him, as was my duty, the risk he was incurring. The opinion of counsel was sent to him, making him fully aware of all the difficulties of the case arising chiefly from the Statute of Limitations, which, however, it was hoped, might not be available in a case of concealed fraud. On obtaining the first opinion of counsel I wrote to Mr. Bailey, on 29th November, 1859, thus:—"We send you copy of counsel's opinion, from which you will perceive that the Statute of Limitations is a bar to Mr. Mose's claim. The fraud of concealment is not, in counsel's judgment, such a legal, although a moral, fraud, as would induce a court of equity to restrain the defendant from setting up the Statute of Limitations. Under these circumstances it would be advisable not to proceed. We will, on your so informing us, remit you the money left with us, less our costs herein." Upon this Mr. Bailey and Mr. Mose came up to town, and at their urgent request I submitted the case to an eminent Queen's counsel. Of the opinion of this gentleman, which as to the Statute of Limitations was also adverse, I likewise sent Mr. Bailey a copy. This brought Mr. Bailey and Mr. Mose again to town, when Mr. Bailey urged me to proceed, notwithstanding these adverse opinions. He insisted that the defendant's answers and the production of the deeds would establish Mose's title. Counsel was also of opinion that time did not begin to run under the statute until the discovery of the fraud, which, according to the statements made to me, was within twenty years. I further pointed out to Mr. Bailey the difficulty he had to encounter arising from the non-identification of the property and the absence of evidence. In a letter read at the inquest, dated the 2nd of March, 1860 (before filing the bill), I wrote Bailey thus:—"In a former letter of ours to you we advised the necessity of your ascertaining where the property was situated and of what it consisted before incurring the expense of a Chancery suit. We can only again reiterate that advice. With regard to the Statute of Limitations, you felt disposed, notwithstanding counsel's opinion to the contrary, to institute the suit and take the opinion of the Court upon it if the point should be raised by the defendants, and so far we think the risk is worth running; but a more important question has to be considered: What are you fighting for? where is the property? Suppose you had at this moment a decree in your favour, of what are you going to take possession?" Bailey and Mose again came to town, and Mr. Bailey still insisted that a suit should be instituted, when I, influenced by his urgent entreaties, consented to carry the matter as far as the coming in of the answers; at the same time I distinctly informed him that unless evidence of title were thereby elicited it would be out of the question to proceed further, and that he would have not only to bear his own but to pay the defendants' costs of the suit. When the answers came in, and I had obtained a sight of the deeds, I refused to proceed further. Mr. Bailey, however, was determined to prosecute the suit to a hearing, and instructed another solicitor to act for him. With this gentleman I had several interviews, and it was arranged that I should deliver to him the papers in the suit on his obtaining the usual order to change solicitors, which but for poor Bailey's death would have been done. You state that Bailey had been assured when he took up the case that he "would have nothing to pay, and that the other parties would have all to pay." I have shown that I gave no such assurance, but the contrary. The risk he incurred was clearly explained to him, and brought prominently before him. These facts, together with the applications to him for money as the suit proceeded, clearly ignore that he could have formed such belief as the result of any communication from me. I have referred to the report of the inquest, and cannot discover the expression of indignation you state the coroner to have made; on the contrary, the coroner, with the opinions of counsel and the letters before him, observed "the letters are most clear." It was in evidence that counsel's opinion stated that, "under existing circumstances, he did not see it possible to prosecute the suit with the remotest chance of success;" and yet "Bailey and his wife were anxious to go on with the case," and that Bailey, so far from being alarmed by the expense he had already incurred, said, "If he had £500 more he would go on with it." I must notice one other point. It transpired on the inquest (though at first denied by Mose) that there was an agreement between him and Bailey to divide the profits. Of this I had not the most remote knowledge until I read the account of the inquest. Bailey was suing as assignee of Mose and the property recovered would therefore, in the first instance, belong to Mose's creditors. There are other misstatements in your article, one of which relates to the answers in the former suit. The material defendants put in no answer, but a mere plea, alleging the bankruptcy of Mose. One defendant alone, who ought not to have been made a party, answered, and he stated his ignorance of the facts charged. With Mr. Torr, of the firm of Sudlow & Co., the solicitors for the principal defendants, I conferred several times before the institution of the suit. He informed me that he had shown the title deeds to third parties, and that they were satisfied Mose had no claim to the property in question, to which I replied that production to a third party was not satisfactory, but that if he would permit me to inspect the deeds, and I was satisfied that Mose had no claim under them, I would not institute the suit. This he refused to do, but again offered to produce them to any third party to be agreed on. My reply was, "you may produce the title deeds to Black Acre, but I want to see the title deeds relating to White Acre." He still declined to allow me personally to inspect them, and the suit of necessity proceeded. The answers of the defendants were excepted to, and set down for hearing. Upon that occasion, my junior counsel in reply to a remark made by the defendant's counsel, said, "that if the defendant's solicitors would permit the plaintiffs' solicitors to inspect the deeds, and they were satisfied the plaintiffs had no case, he would undertake that all further litigation should cease." This offer was not accepted, and the litigation proceeded. Some of the exceptions were allowed; others overruled. Further answers were put in, whereupon counsel advised an application at chambers for production and inspection of documents, which was made, and although opposed by the solicitors for both sets of defendants, granted. In due course the affidavits came in. That made by Mr. Torr's clients set up as privileged certain title deeds and documents set forth in a very long schedule to the affidavit which they refused to produce. Those as to which they did not claim privilege were too insignificant to be looked at—mere waste paper. I then applied for a copy of the affidavit made by Mr. Torr's clients, whereupon he on the 1st January last, wrote my firm as follows, "Dear Sirs.—*Bailey* v. *Lamb*.—We send herewith copy of our defendant's affidavit as to documents as desired, and beg to add that we have our client's permission to produce (notwithstanding the protection claimed in the affidavit) all such of the documents as throw light upon the title to the late Mr. John Lamb the younger's property, and you can commence the inspection at any time convenient to yourselves; to-day even if you like."—This was the first time I was offered an inspection. Had it been offered me before the commencement of this suit, the suit would never have been instituted by me. Whether Mr. Torr or his client is to blame, I leave them to settle between themselves.

As this letter is already too long, I will conclude by once more suggesting that the facts should be looked at as they were represented to me at the time, and not under the bias of the recent distressing event.—I am, Sir, your's obediently,

February 22. JNO. F. W. FESENMEYER.

[We have no desire to enter upon any controversy with the writer of this letter, as to the correctness of our impressions of what the opinion of the coroner and jury was. We should have no difficulty, however, in finding authority, in the report of the inquest, for what we said last week on this subject. Messrs. Sudlow, Torr, & Co., are at issue with Mr. Fesenmeyer upon a much more material point, as will be seen by their letter to-day. But as it is the duty of journalists to be

impartial, we think it right to abstain, for the present, from any further comment upon this case.—Ed. *S. J.*]

SIR,—The sympathy expressed in your leading article of last week in favour of the deceased plaintiff, Bailey, ought, we venture to suggest, to be extended also to our clients the unfortunate and much victimised defendants, who by reason of the plaintiff's suicide, are left to bear their own costs of the unnecessary and vexatious litigation which has been inflicted on them.

Our clients have been for many years harassed by claims made by Mose to property of which he alleged that his mother had been deprived by our clients' ancestors as long ago as the year 1773! Six solicitors in turn took up, and in succession abandoned, his case; and, in order to endeavour to put a stop to further annoyance we, in the year 1857, produced to the professional gentlemen who then interested themselves on Mose's behalf our clients' title deeds to the property in question, which shewed that our client's testator purchased the property more than thirty years subsequently to 1773; and further, that it never did belong to the ancestor under whom Mose claimed; and they advised Mose to that effect. We gave notice of the result of such production of the deeds to Bailey (or rather to Messrs. Grane & Fesenmeyer, his solicitors) last year, before he filed the present bill, referred them to the gentlemen who had previously inspected the deeds and offered again to produce the deeds to any competent disinterested third person whom we might mutually agree on. The offer was declined, the bill filed, and 190 folios of interrogatories administered to our clients. Our answer set out our title fully, and subsequently the plaintiff obtained a formal order for us to produce the deeds; and immediately his solicitors saw them, it appears from the proceedings on the inquest that they wrote to Bailey that he had better abandon his proceedings. He thereupon shoots himself and leaves the defendants to bear their own costs, for which, we fear, they have no remedy against his estate. The bill, as appears on the face of it, was filed without the approbation of the official assignee, who refused to become a co-plaintiff, and was accordingly made by Bailey, a defendant—a wise resolution, as it proves, on the part of the official assignee, who has thereby escaped liability to our clients' costs.

It is very hard on persons in the position of our clients (the defendants) to be exposed to such attacks, especially after they have produced their title deeds, and convinced the claimant's then advisers that his claim was without foundation; and it is surely a defect in the law that they should be left remediless as to the costs which they have sustained by reason of such vexatious and unwarrantable proceedings.—We are, sir, yours very obediently, SUDLOW, TORR, & Co.

38, Bedford-row, W.C., 19th Feb. 1861.

THE SOLICITORS' ACT, 1860.

The Metropolitan and Provincial Law Association have often drawn attention to the fact that many official appointments that properly belong to solicitors are filled by barristers. The 16th section is a fearful step in the direction of continuing this practice, as was pointed out in your columns long ago. Who was the author of this clause? I cannot find it in the original Bill. The annual meeting of both the above and the Law Institution will afford a proper opportunity for inquiry; and I hope it will be ascertained. P. P.

LORD ST. LEONARDS' BILL ON CONSTRUCTIVE NOTICE.

This Bill provides that a purchaser shall not be bound by constructive notice. In a former bill his lordship shaped the clause to the effect that a purchaser should not be bound by any other than actual notice; the clause now introduced is virtually the same, and the valuable remarks in your Journal of the 21st May, 1859, p. 542, equally apply. This remarkably short bill affords a marked instance of piecemeal legislation. It will materially affect the remedies of creditors, a class of persons with whom his lordship, apparently, has but little sympathy; the recent act on judgments has already limited the remedy of creditors, and the least that ought to be done for them should be that the registering of a judgment should be notice to a purchaser. There would then be one case in which the difficulty of what is and what is not a sufficient notice under the proposed Act would be defined.

Probably your influential journal will direct the attention of the profession to this bill. Z.

26, Chancery-lane, Feb. 21, 1861.

LORD CRANWORTH'S MORTGAGEES ACT.*

I think the mortgagee's solicitor is quite right in refusing to accept of a mortgage framed under this Act, as any prudent mortgagee would prefer having the usual powers inserted in the mortgage deed to exercising those given by this Act, to the effect of which he knows little or nothing, and which may be materially affected or crippled by judicial decision. I am not aware that this Act dispenses with the necessity for covenants for title, and must suppose your correspondent refers to the Act of 8 & 9 Vic., c. 119, but surely he cannot consider it unreasonable for the mortgagee's solicitor to refuse to adopt that Act, it being practically a dead letter.

Your correspondent also greatly exaggerates the saving effected by adopting Lord Cranworth's Act. I have calculated that no more than fifteen folios is rendered unnecessary by it, and the costs of drawing and fair copy and engrossing this additional matter, together with stamp and parchment, is only £2 5*s.*, and not £5 as stated by him.

ANOTHER PROVINCIAL SOLICITOR.

Liverpool, Feb. 19th.

In answer to the question of "A Provincial Solicitor," I would suggest that the remedy would be the taxation of the bill. How the taxing master or, ultimately, the Court, would decide the point your correspondent has raised is a matter of no little interest to the profession. If I could presume to offer an opinion, it would be that, as the adoption of the provisions of the Act is entirely optional they can only be used, and were only intended to be used, where parties agree to do so.

R. J. D.

SHERIFF OF COUNTY AND M.P.

There would seem to be an answer to the objection your correspondent would urge against an M.P. being also sheriff and consequently judge of *his own election*, that the writ from the Crown Office in all such cases might go to the coroner. The ministerial office of the coroner is only as the sheriff's substitute; for when just exception can be taken to the sheriff for suspicion of partiality (as that he is interested in the suit), the process must then be awarded to the coroner instead of the sheriff for execution of the King's writs, 4 Inst. 271, Blac. Com. 349.

There being so many sages of the law in the Privy Council, it is difficult to imagine such a question would not occur to them or the officials of the Crown; and, again, the sheriff acts by his deputy at most of the elections for county. J. R.

A sheriff is ineligible to sit in Parliament for the county of which he is sheriff, as also for any city or borough to which his precept extends. A returning officer is, in like manner, ineligible for the city or borough for which he acts. The 16 & 17 Vict., c. 68, does not appear to have altered the law of elections in this respect. Mr. May, however, seems to think that it has had this effect. The ground of this suggestion of his must be the change in the form of the writ effected by the Act. There is a principle, however, involved in such cases independently of the terms of the writ, and that principle is the rational one that no man is to be judge in his own cause. The sixth section of the Act of Settlement prohibits persons holding offices or places of profit under the Crown from being capable of sitting in the House of Commons. And this is doubtless the principle that is supposed by the non-professional public to incapacitate sheriffs from serving as members of Parliament. Their office, however, has not that personal relation to the Monarch which alone was contemplated by the Act of Settlement. The true reason is the one we have stated. The Scotch Reform Act, s. 36, excludes from Parliament every sheriff substitute, sheriff clerk, and deputy-sheriff clerk; also town clerks, and deputy town-clerks. There also sheriffs may sit for any other place than that to which their office belongs, the principle of exclusion being applicable only to their sphere of quasi-judicial jurisdiction.—Vide May's Law of Parliament, p. 33; Rogers on Elections M.

The Provinces.

LANCASHIRE.—At the Bury County Court, on the 9th inst. the following case came on for hearing before J. Worlledge, Esq: — *Trudgett* v. *Parkington*. — Mr. Walpole, solicitor,

* See *ante*, p. 283.

appeared for the plaintiff, and Mr. Salmon, solicitor, for the defendant.—The action was brought to recover the value of a hare. Trudgett was a miller at Stanton, and Parkington looked after the game for a gentleman named Lofft, of Troston. Trudgett occupied a piece of land, upon which his mill stood, and this land ran directly into that of Mr. Lofft. On the 29th of December Trudgett had some men carting muck, and he went with his dog to see the men at work, and the dog started a hare in Trudgett's field, and after running her across two or three fields and the high road she was killed on a piece of land in the occupation of Mr. Taylor, but belonging to Mr. Lofft. Parkington then seized the hare which had been killed by Trudgett's dog and went to Trudgett and told him that he should hear more about it by and bye, and he summoned him before the magistrates, who dismissed the case. The question was whether under these circumstances Trudgett was not entitled to the hare. The judge said he had no doubt upon the case. The conversion of the hare complained of was taking it away from the dog, which he thought was justified under the 36th sec. 1 & 2 Wm. 4., and the judgment of the court must be for the defendant.

Manchester.—At the annual meeting of the members of the Manchester Law Association, held on Friday the 15th inst. (Mr. Cobbett, president, in the chair,) after the reading of the report, Mr. Baker, the chairman of the committee for the past year, presented to Mr. Francis Marriott, on behalf of the association, a testimonial, consisting of an elegant silver salver, silver claret jug, and two silver goblets, the salver bearing an inscription acknowledging the valuable services of Mr. Marriott as honorary secretary for a period of six years.

Ireland.

THE PROFESSION AND THE LANDED ESTATES COURT.

(*Concluded from page* 223.)

The law of real property in Ireland resembling (except in a few unimportant details) that of England, it follows that the owner of land is at liberty to sell, or mortgage, or partition, or exchange it without having recourse to any court of justice whatever. The Court of Chancery maintains unimpaired its old jurisdiction; and claimants on land are still at liberty to institute suits for sale or foreclosure, and partition; suits may also be commenced as formerly. In short, the Landed Estates Court Act merely *enables* owners of and incumbrancers on land, to proceed, if they think fit, in that Court; and enables that Court, on proper applications being made and notices given, to sell, convey, partition, &c., and also to carry out contracts for sale. It is important to bear these facts in mind, when considering the place filled by this Court in the land system of the country. No petitioner comes in unwillingly, for he has the option of taking other means for effecting his object, whatever that may be. But the fact is (as already stated), that the solicitors, as a body, prefer to transact most of the business relating to land through the medium of the Court. The interests of their clients are, of course, the first object of their concern; but they are not uninfluenced by the fact that the rules of practice and the table of fees have been framed very much in accordance with the views of the Law Society, and without the slightest intention of either dispensing with the services of solicitors, or of denying them fair remuneration for their services. The estimate formed by the profession of the machinery provided by this Act is well shown by the increasing number of applications to the Court to execute contracts for sales of estates, and by the growing habit of inserting in such contracts a proviso that the Court shall be called into requisition for the purpose of carrying out the contract.

In point of fact, the Court assumes the functions of the conveyancing counsel rather than those of the solicitor, of course, with such enlarged powers as render this analogy a very imperfect one. Let a conveyancer be imagined, however, endowed with absolute power to call for and procure deeds or evidences of title from any custody—empowered peremptorily to require persons to put forward any claims that they may have—empowered to levy by sale all demands on the land, and enabled to clothe his orders and conveyances with the force of an Act of Parliament. Our imaginary conveyancer would soon have a complete monopoly of the business relating to land, for solicitors would, of course, recommend their clients to take advantage of his powers and skill.

Now, instead of this imaginary Brodie or Duval, possessed of novel and unlimited powers, there exists for Ireland a court consisting of a trio of conveyancing judges, clothed with so much of the jurisdiction of an equity court as is required, and into whose offices and chambers nearly all the current landed business of the country passes, almost as a matter of course, the larger part of it being, of of course, the administrative or non-contentious kind. The initiatory step is by "petition," instead of by "instructions;" and in lieu of all fees, a duty or per centage on the value of the property is levied for the purposes of revenue, all the expenses of the Court being in the first instance defrayed by Parliamentary votes. It appears from returns just compiled that exactly 50 per cent. of the petitions of all kinds proceed from the owners themselves, and it is computed that 30 per cent. more are "friendly" petitions; leaving a balance of 20 per cent., or one-fifth of the applications only, being adverse petitions by creditors of the estates. Instead of a creditor's court, as it was in the first years of its history, it has become a kind of land-exchange, and the judges may be regarded as conveyancers-general; and here the vendor and the purchaser, the owner and the incumbrancer, resort, as readily as people in search of Three per Cents. resort to the Stock Exchange, the transactions being managed in the former case by a solicitor and in the latter by a broker. It is not to be supposed, however, that the services of the Bar are entirely dispensed with. Counsel find consolation in drawing petitions, in revising abstracts, and in arguing matters of title where the Court is in doubt, or where some contention arises touching a tenancy, an easement, a boundary, an annuity, or touching conflicting claims upon an estate or a fund. This Court seems to us to have judiciously defined the province of counsel, where it declares in its rules of practice that counsel's attendance is to be allowed on taxation where "any matter requiring argument" has come before the Court.

It may be inquired, How is the general conveyancing business of the country affected by this system?

The answer is, that while titles are greatly simplified, transactions in land are very much increased in number. Abstracts are shortened, but conveyances and other deeds are multiplied. On a rough estimate, 3,300 estates have passed through the court since its first establishment; and these have been conveyed (in lots) by about 13,000 separate deeds of conveyance. If the court had never existed, it is believed that less than one-tenth of this number of conveyances of land in Ireland would in due course have been executed. The title of a purchaser under the court, is, of course, comparatively simple, as no inquiries are made beyond the date of the purchase. But considering the increased number of separate ownerships, and the increased facilities for buying and selling land, there is every reason for concluding that even apart from the mere conveyances to purchasers, the number of deeds executed relating to land, has largely increased. This is a point on which, from its very nature, statistics cannot be adduced, but the experience of the solicitors, and the increased business of the office for registering deeds, confirm the statement.

But as the court is in the Irish metropolis, how do solicitors residing in the country manage to conduct cases in it?

Every solicitor has an address in Dublin, where notices, &c., may be served on his, and this address is in fact, the office of his town agent. With the arrangements between the solicitor and his agent, the court has, of course, nothing to do; but it may be stated that a very common arrangement is, the payment to the latter of an annual allowance—in other words, country solicitors frequently pay a salary in lieu of half-fees to their town agents, and we may add—from some instances that we have heard of sometimes, a very small one. Costs "out of pocket," there are few, if any, as the *ad valorem* duty to Government (in lieu of court fees) is levied at the last stage of the proceedings. But to explain the matter more clearly. The proceedings in the Landed Estates Court are of such a nature that, except so far as more attendances at court are concerned, the solicitor conducting a case may reside in the far north, or the extreme south; yet so long as the documentary statements are sufficiently framed, and the documentary evidence complete, it matters little who attends to lodge the papers, and receive the direction of the Court thereon. It is evident that matters of title depend very little on the person who attends court or chambers, and very much on the written statements and proofs. A brief sketch of an ordinary case in the Landed Estates Court, conducted by a solicitor living in some provincial town, will show how little the personal presence of the solicitor is required.

The Court expects that all the facts necessary and proper to be stated, shall appear on the *petition* and accompanying schedules. These are very full and minute, are drawn up according

to forms promulgated by the Court, and after verification by affidavit, are sent up to be filed. All affidavits also may be sworn before masters extraordinary in the country, by whom they are sealed up, and forwarded to the proper officer of the Court. Whatever the object of the petition, the first step after an order has been made on it, is the publication of a *notice* in the newspapers nearest to the property, informing all persons who may have claims on the estate of the order. Then follows the main step of all—the preparation of the *abstract*, and accompanying deeds and documents. Everything, of course, in a Court of Title depends on this; and further information and further evidence are often called for; but here again, the duty of a town agent is mainly to lodge what has been prepared for lodgment by a solicitor, and to obtain the rulings and directions of the Court upon the case. If a *sale* be required, it may take place either in town or country—at the discretion of the Court; and as to the mode, time, and place of sale, the vendors are always consulted. If a survey be required, it is of course made on the spot, and the maps are prepared at the central office of the Ordnance department; after a sale, the conveyance to a purchaser follows. The final step, where the estate is incumbered, is the preparation of the schedule of incumbrances, answering to the master's report in the foreclosure or administration suit of former times. This and the final notices to all parties interested may also be prepared at any distance, and then brought in to be settled by the officer of the court.

An important document has not been mentioned, the *Rental*, which contains very full particulars of all tenancies, if any, as well as the particulars and conditions of sale. This is usually prepared on the spot, after inspection of the tenants' leases; and the draft is sent up to be settled by the proper officer, before being printed. All the principal steps then being documentary and of a kind involving no question of locality, it is evident that the attendances in the offices of the Court are the principal items, requiring the intervention of an agent; and if there is a peculiarity in the "schedule of fees," it is that while the labour of preparing the various written statements and evidence required by the Court, is fairly remunerated, attendances, as such, are somewhat less liberally provided for.

From inquiries we have made of persons competent to give information on this subject, we arrive at the conclusion that, on an average, one-tenth part of the costs of proceedings are earned by the town agent, while nine-tenths may be set down as the share of the solicitor in the country, the difference in favour of the latter arising from the important items connected with the petition, abstract, and other documents required by the Court, to which reference has been made. So stands the case as between the town and country solicitors. It is right, however, to mention that the majority of the great landed proprietors confide their legal business to Dublin solicitors, so that it is unusual to find an estate of the first magnitude administered by the Court under the management of a provincial solicitor. The Court has, of course, no voice in the choice of a solicitor; but it takes care that the client shall be unfettered in his selection, and that it shall not be necessary for him to employ a solicitor in town. From what has been stated it will be obvious that the country solicitors are at no disadvantage, either as regards facilities for conducting cases, or as regards remuneration, when compared with the solicitors practising in town. Although the Court is a metropolitan one, its procedure is such as to involve none of the evils arising from centralization.

ADDRESS TO BARON GREENE.

The Incorporated Society of the attorneys and solicitors of Ireland have presented an address to Baron Greene on his retirement from the Irish Bench, which he had so long adorned. In consequence of the delicate state of the Baron's health, the address was signed in the usual manner by the president on behalf of the society, and transmitted to his lordship.

Review.

The Common Law Procedure Acts and other Statutes relating to the Practice of the Superior Courts of Common Law. With Notes. By John C. F. S. Day, Barrister-at-Law. Sweet. 1861.

The Common Law Procedure Acts of 1852, 1854, *and* 1860. With Notes, and the Forms and Rules, to which are prefixed, or appended, all the Acts (or portions of Acts) relating to Common Law Procedure or the Trial of Issues of Fact, in the Courts of Common Law, Chancery, or Probate, with the Rules of each Court respectively. Adapted to the use of Practitioners in all the Courts; and also to the use of Students. By W. F. Finlason, Esq., of the Middle Temple, Barrister-at-Law. Stevens & Sons. 1860.

A Handy Book for the Common Law Judges' Chambers. By Geo. H. Parkinson, Chamber Clerk to the Hon. Mr. Justice Byles. Butterworths. 1861.

An important consequence of the reforms in procedure and practice introduced by the recent common law commission, and one which has not hitherto received sufficient attention, may be traced in the alteration effected in the form and character of that branch of the law, considered apart from the substantial amendments which constituted the immediate objects of those reforms. Our common law procedure was formerly an unwritten law; its sources were to be sought in the maxims of natural justice relating to procedure, and in the usage and practice of the Courts. Such a law was eminently uncertain and fluctuating, it varied from age to age and it varied in every court. It has now become characteristically a *lex scripta:* a written rule is to be found for the guidance of the suitor in every step in his appeal to justice. It is impossible to deny the superior advantage of this mode of treating the law of procedure. However important it may be thought to preserve the scientific connection between the commands of law and the pure sources of reason whence they emanate, the practice of the law requires some readier and more accessible guide for its ordinary and immediate necessities than the mere light of abstract principles.

The Common Law Procedure Acts have gone far towards supplying a new promulgation of the law of procedure in the form of a written law. In three successive efforts, each supplementary to the former, the Legislature has enacted a body of law on this subject which exhibits all the essential qualities of a code without its pretence. Indeed, it would not be a difficult task, by a consolidation and rearrangement of these statutes, to frame a very complete and sufficient code of procedure—one, moreover, the constituents of which have been proved by the test of experience to be adequate to the vast business conducted in our common law courts. If the next extensive alteration in the law of procedure were to take this direction, much benefit might be anticipated. At any rate, the course of our reforms in common law procedure are highly suggestive of reflections as to the true method and progress of codification in general, and as to the nature of the particular subjects to which it may rightly be applied.

This great change in the form of our law of procedure has produced a corresponding change in the mode of expounding it. The treatment of procedure as a matter of principle illustrated and explained by its manifold applications in decided cases, is now, for the most part, superseded by a plain reference to the directions of the rules and statutes. The bulky volumes of case law, compiled with so much labour and acumen by Tidd, Saunders, Lush, and Archbold, are displaced, for all ordinary practical purposes, by simple editions of the statutes. Chitty's edition of Archbold's practice, the work on procedure which is most in favour at present, and which, by the accumulated labours of successive editors, has attained a completeness that may be justly pointed to as one of the marvels of legal literature, still retains a large field of utility, and as an authority on the more minute points of procedure is indispensable; but for the commoner purpose of referring to the plain letter of the new statutes, it is certainly found very inconvenient and troublesome for use. The new enactments being scattered, section by section, throughout the work, it requires an amount of thought and care to find them, greater than the exigencies of every day practice can afford to spend. In fact, the work is too cumbersome and elaborate for the more simplified form of modern practice. In nine cases out of ten, a reference to the statute is sufficient to solve all difficulty, and the research into antecedent case law is superfluous. In order to maintain that work in the position it has hitherto held, it will be necessary to recast it thoroughly in a form more adapted to modern requirements.

In the meanwhile we can recommend to the profession Mr. Day's and Mr. Finlason's books of practice. Mr. Day's supplies the text of the statute law with just as much of case law as serves to guide its application and to explain its construction. It contains the three Common Law Procedure Acts, the Bills of Exchange Act, the Mercantile Law Amendment Act the Interpleader Acts, and other statutes of minor importance

with all the rules of court relating to procedure and practice. Mr. Day is well known in Westminster Hall, as engaged in a large business of that class which ensures an intimate familiarity with practice in all its branches; and his experience and discernment have been applied with much success in an notating this edition of the statutes. He has understood how to sieze the salient points for practical use, where to refrain from comment, and where to enlarge. The decisions are noted clearly, concisely, and accurately, and with an exact appreciation of their practical bearing; where occasion required they are grouped together with systematic arrangement, and throughout the work they are so presented that the practitioner may at once come at any point with facility. Practical utility, the sole object of the work, has been carefully kept in view. The two latter Common Law Procedure Acts form comparatively new ground for annotation, and on these much careful labour has been bestowed. In this part of the work, the notes on *Inspection*, *Interrogatories*, *Attachment of Debts*, *Equitable Defences*, *Interpleader*, and *Equitable Relief against Forfeiture*, will be found to contain much new and valuable matter. Among the recent points of interest which have turned up on the new Acts, and which may be found referred to in this volume, the following seem worthy of notice. From the case of *The Penarth Harbour Company* v. *Cardiff Waterworks Company* (29 L. J., C. P., 230), it appears that the summary abolition of the old ceremony of *profert* and *oyer*, inadvertently carried away with it the only mode by which one party obtained inspection of the documents relied on in the pleadings of his opponent. The judges, however, deciding that it was not the intention of the Act to abolish this right of inspection, granted an equivalent inspection upon summons, under their summary jurisdiction. This case appears to have been too recent for Mr. Day to insert under its proper section; but we find it duly noted up under the subsequent Act in treating of inspection. The case of *Bates* v. *Bates* (9 W. R. 255, noted in the addenda to Mr. Day's work), illustrates the extensive effect of the 18th section of the first Act. The plaintiff, having served the defendant with a writ in California, was allowed to proceed by filing a declaration, and sticking up a notice in the Master's office, requiring the defendant to plead in eight days. Willes, J., who had been one of the commissioners, however, said that he was quite sure that the intention of the framers of that section was, that there should be notice of the declaration, and an opportunity to plead. The case of *Ex parte Turner* (36 L. J. c. 93, noted in the addenda), is also important. It shows that funds in the hands of the official manager of a company may be attached by a creditor of the company under the garnishee clauses.

The Common Law Procedure Act, 1860, has extended interpleader proceedings to cases where "the titles of the claimants have not a common origin, but are adverse to, and independent of, one another." What cases fall within this extension, Mr. Day confesses his inability to explain. We feel obliged to confess a similar inability, and having sought in other quarters in vain for an explanation, cannot fairly impute it to him as a defect, especially as he has taken the occasion of this section to explain the difficult practice of interpleader in a very full note. On the whole, we have found his work very trustworthy and sufficient on the points to which we have referred for the purpose of testing it; and, in our opinion, it seems calculated to be highly useful to practitioners as a book of common law practice. A more than usually careful and copious index, by Mr. O. B. C. Harrison, renders the otherwise disconnected contents readily available, and shows that no pains have been spared in making the work complete.

The plan of Mr. Finlason's book is not quite so ambitious as that of Mr. Day. Mr. Finlason, in addition to the Common Law Procedure Acts, gives also the text of the Bills of Exchange Act; the Bills of Sale Act; the Mercantile Law Amendment Act; the County Courts Act, (so far as relates to procedure in the superior courts); the Chancery Amendment Act as to trials of issues of fact; the Court of Probate Act, and the Divorce Court Act; and upon all these there are judicious and practical notes, although there is of course nothing like an attempt at a complete or exhaustive treatment of the numerous subjects touched upon. Mr. Finlason's book embraces a wider field than is occupied by Mr. Day, is printed upon much better paper, and is altogether much more convenient for use in court, or the judges' chambers. There is one drawback to it, however, —it has no list of cases, and its index is certainly too meagre. The notes would also have been more useful if Mr. Finlason had made greater reference to the practice cases to be found in the pages of the *Weekly Reporter*.

We have hardly left ourselves room to say any more of Mr. Parkinson's Handy Book, than that it is extremely well calculated for the purpose for which it is intended. So much work is now done in common law chambers by junior clerks, that such a little treatise is much wanted. Mr. Parkinson has performed his task skilfully, and with care.

SOCIETY FOR PROMOTING THE AMENDMENT OF THE LAW.

At a meeting of this Society held on the 14th of January last, Mr. Serjeant WOOLRYCH read the following paper on "The Expediency of abolishing the practice of Opening Biddings in the Court of Chancery:"—

From very early times, certainly for more than a century, it has been the practice of the Court of Chancery to direct the re-sale of an estate, although an actual purchaser may be in existence. The estate having been sold under the order of the Court, this practice is denominated, "opening the biddings." There are undoubtedly instances where a purchase effected through fraud or collusion has been set aside by a court of equity, but it is peculiar to that court to set aside a *bonâ fide* purchase upon an advance of price (which is the staple of the new bidding), to open the sale after the purchase has been confirmed by the master, or, as at present, after eight days succeeding the judge's certificate. The latitude allowed is considerable, and the discretion absolute. It is immaterial, with regard to the principle, whether the disappointed claimant were present or not at the sale, nor is any advanced sum in particular, as £10, to be considered as conferring any certain right to the privilege; nor even after the eight days, can a purchaser be entirely sure whether some sinister suggestion may not, at least, embarrass him with an uncertain litigation, the Court having, on the one hand, the unction of keeping faith with purchasers, and on the other, an anxiety to help suitors by shielding them from the remotest chance of collusion. It may be said that these difficulties, which occasionally beset the purchaser in Chancery, may have operated to throw a shade over the value of the property offered. By analogy to the case of copyholds, the price of which is calculated with reference to the expected fines and other burthens, it might be supposed that the buyer of a chancery estate would likewise make his tender in conformity with the prospects he might entertain of future disappointment or litigation. Hence, on the other hand, the Court might have interposed its anomalous jurisdiction in order to protect property from undue depreciation. It must, however, be remembered, if any weight be assigned to this argument, that there is always a paper containing a reserved bidding, which remains in the hands of the auctioneer, until the close of the sale of each lot; so that it would seem to be a sufficient protection to produce this reserve without calling in aid the additional power which the courts have so long assumed. The question is, whether there are any claims on behalf of an intending purchaser in the Court of Chancery of a superior character to those of a person who has been disappointed of his wishes at an ordinary auction. There have been three elements in the consideration of this matter—the state of things before the confirmation of the report by the master; the position of vendor and purchaser after that approval; and the condition of the same parties under the modern usage of allowing biddings to be opened within eight days next after the signature of the judge's certificate of sale.

The first point has been productive of many discussions, the second and third must be viewed within a much narrower circle. Under the first head, a reasonable proposal of augmentation was generally deemed sufficient to warrant the success of the application for a new sale, as in the case of a price wholly inadequate to the value of the estate. (By Lord Langdale, 17 L. J. Ch. 486, in *Manvers* v. *Furze*.) There is no rule as to 5 per cent. or 10 per cent. The discretion of the judge under each peculiar concern is employed. Where a sum of £350 was offered as an addition to £5,300, it was not accepted, being too small, and the judge took occasion to observe that the Court does not confine itself to a particular rate per cent., although 10 per cent. is a sort of general rule. (1 Sim. & Stu., 20, *Garstone* v. *Edwards*; 2 Madd. Ch. Pr., 656, *Bridges* v. *Phillips*, M.S.) But £500 added to £12,010 were permitted. (2 Russ. 606, *Lefroy* v. *Lefroy*.) So £500 on £8,950. (1 M'Cl. 82, *Pearson* v. *Collett*.) Under any circumstances, an advance of less than £40 will not be received. (4 Madd. 460, *Farlow* v. *Weildon* and *Gilbert* v. *Wethered* was cited, S. P. Ibid; See some Irish cases; £40 at

the least, £10 per cent. in advance; Rule refused, cor. *Hart* v. *C.*, 2 Moll. 510, *Leland* v. *Griffith*; See Ibid. 508, *Aubrey* v. *Denny*; £10 per cent. required upon a larger sum, Ibid. 508, *Chester* v. *Gorges*; Costs of former purchaser to be paid; See several other cases. Dart's Vend. & Purch., 3rd. ed. 755.)

A larger sum seems to have been expected from a person present at the sale than from a stranger; (Jac. Rep. 526, *Tyndall* v. *Warre.*) indeed a struggle was made to hinder a person present at the sale from any interference, as to future views upon the estate. The principle enunciated by Sir John Leach was, that the sales by the court would not in that case have the full benefit of the spirit of competition, and the cases were *Somner* v. *Charlton* (5 Ves. 655.) and *M'Culloch* v. *Cotbatch*, (3 Madd, 314, ibid.) and another case, as it seems, before Lord Kenyon. (16 Ves. 140, by Benyon, *amicus curiæ*, Lord Eldon apparently acc. in *Preston* v. *Barker.*) But these authorities have not survived in that character, although Lord Eldon was much disposed, using his own words, "To discourage a person present at the sale, and lying by, speculating upon the event, and afterwards coming forward with an advance." (6 Ves. 117, *Rigby* v. *Macnamara.*) Yet he gave way, upon being informed that in the only case to the contrary the person seeking to open the biddings was a party to the cause. (2 Jac. & W. 347, *Thornhill* v. *Thornhill*, 1 Ch. P. Coop. 380, *Shallcross* v. *Hibberson.*) Lord Loughborough had previously sanctioned such an opening, although it was said that the estates had been sold above the value. (5 Ves. 655, *Tait* v. *Ld. Northwick.*) It does not follow, nevertheless, that a chancellor considers himself bound by the decision of another chancellor. And the second bidding was allowed, at the instance of a person who had attended the former sale by an agent. (5 Ves. 655, *Tait* v. *Ld. Northwick.*) So again, the only doubt was as to the amount of the advance in such a case; and that amount having been increased, the order was made. (5 M'Clelland 82, *Pearson* v. *Collett.*) It is no objection that a party interested as a residuary legatee, seeks to have a second sale; (G. Coop. 95, *Hooper* v. *Goodwin.*) still, the right rule is, that the opening of biddings is not so much intended for the purchaser or persons desirous of a fresh sale, as for the owners of the estate, especially creditors, infants, and persons who are not acquainted with the value of the property. (2 Russ. 606, *Lefroy* v. *Lefroy.*)

After the confirmation of the report of the sale by the master, it was certainly most unusual to interfere. (3 Bro. C.C. 475, *Scott* v. *Nesbit*; 1 Ves., jun. 287, *Prideaux* v. *Prideaux*; 11 Ves. 57, *Morice* v. *Bishop of Durham*; 14 Ves. 151, *White* v. *Wilson*; 1 Kay & J. 28.) Mere overbidding was not deemed sufficient. (3 Anstr. 656, *Boyer* v. *Blackwell.*) There was some collusion in Gower's case; (2 Eden. 348.) and, on that ground, the biddings were re-opened, but after the second sale, an advance of £2,000 in order to a third sale was rejected, for this was overbidding alone. This denial, however, as to overbidding must not be confounded with overbidding alone *before* the confirmation of the report or the certificate. The principle is quite different.

A fault on the part of the purchaser will produce this alteration, as fraud. So fraudulent negligence in another person, an agent, for example, would have the same effect, for it is against conscience that the purchaser should take advantage of such misbehaviour. Yet so precarious were the proceedings of courts of equity, that in cases where Lord Eldon would decline to interfere, Lord Loughborough, even after the confirmation of the report, hesitated simply upon the amount of advance. "They must bid more," said the chancellor. They bade more, and the offer was accepted. (5 Ves. 86, *Chetham* v. *Grugeon.*)

Upon one occasion the vendor was in prison, and before the confirmation of the report, he had a promise from two persons that they would instruct their agents to open the biddings, but they failed in their engagement. There was an overbidding of £4,000, the largest sum ever known in that character. Nevertheless, the lords commissioners would not have accepted that sum as an overbidding without more, but they yielded to the circumstance of duress, requiring from him, the vendor, a deposit of the full sum of £4,000. (2 Ves., jun., 51, *Watson* v. *Birch.*) Yet, strong as this case appears, Lord Eldon said he never would have made these orders. He disapproved strongly of *Watson* v. *Birch.* There was neither fraudulent conduct in the purchaser, nor fraudulent negligence in any other person. (In *Morice* v. *the Bishop of Durham*, 11 Ves. 57.)

Fraud, therefore, is decisive upon the point. A survey was made of an estate, and by collusion with the tenants (who would pay so much less rent), the value and quality of the estate were underrated. It was then sold for the benefit of creditors, and fetched £27,500. £800 were then offered in advance, the report not having as yet been confirmed, and a second sale took place. The sum of £28,500 was then offered, and the master reported in favour of the bidder. The report was then confirmed, upon which all these facts of collusion and depreciation were revealed, and £2,000 more being tendered, the sale was again opened, it being positively affirmed by the chancellor (Lord Northington) that the overbidding alone would not have sufficed. The estate brought £38,000, and £2,000 still in increase being pressed forward, the court declined to interpose after the confirmation of a fresh report. (2 Eden. 348, *Gower* v. *Gower.*) Thus the principles of overbidding and fraud were clearly distinguished.

Surprise was scarcely held to be an ingredient upon the discussion of the master's report, nor is it now under the certificate. At all events, where the applicant was present at a sale, and was informed, in common with the rest of the company, by the auctioneer, that any one might come within eight days after the report, but failed to appear, no allegation of surprise was allowed to be entertained, (2 Jac. & Walk. 347, *Thornhill* v. *Thornhill,*) and a mistake as to the day of sale will require a *strong* advance. (1 Ves., jun. 453, Anon.)

We have said that the certificate of eight days is equivalent to the old confirmation of the report by the master, therefore, within that time the biddings will be opened, (1 Kay & J., 28, *Bridger* v. *Pinfold,*) and it is worthy of remark that the modern judges of the Court of Chancery are quite prepared to support the practice which is now under discussion, notwithstanding the force of prior decisions. Very special circumstances might even induce them to yield to an application made at the end of eight days from the certificate of sale. There appears to be some colour for this in a case where the purchaser bought a lot for £2,770, and signed the contract. It was on the 2nd of August. On the 4th the certificate was settled, and was approved on the 9th by the judge. Eight days clear were then allowable for any one to apply for an order to open the biddings. That period having expired during the long vacation, the purchaser required the abstracts of title, and these he got, together with the valuation of the timber on the estate on the 21st of August. The business then proceeded; but on the 29th a summons was served upon the purchaser, to the effect that if all his costs should be paid, another person having offered, an advanced bidding should be substituted in his room. The Vice-Chancellor stating that the increase of price amounted to £300, granted the prayer, and made the order; whereupon the purchaser appealed. Now, there were some singular facts in this case. The agent for the person who had been so far successful in opening the biddings, had actually declared that he would bid no longer, since the biddings had gone far beyond the value of the property. The land, as valued, was worth £1,400, whereas, £2,770 were offered for it at the sale. Of course, according to the most ordinary rules of common sense, the appeal succeeded; but the L. J. Knight Bruce used these equivocal expressions—"Glad as he would have been to give the applicant relief on a substantial advance of price, he thought it would be dangerous to the general practice of the court to grant the application. The case, however, was not one for costs." (25 L. J. Ch. 201.) If I read this decision rightly, it holds that an individual who has offered £1,300 more than the value of an estate, and who has, to all intents, been declared the purchaser, and who has duly awaited the time prescribed by law for the ratification of his purchase, may be suddenly invaded by a new claimant, narrowly avoid the consequences of the claim, and be saddled with his own costs of a most righteous appeal. So closely pressed were the counsel against the purchaser, that they first objected to the counting of any part of the vacation in the eight days; and, secondly, they called this a case of great hardship, because the interests of infants were concerned.

This event occurred in 1856. Some months afterwards another case arose of equal hardship, if we regard the principle of the subject now under consideration. (*Osborn* v. *Foreman*, 25 L. J. Ch. 340.) A property had been put up for sale, but the reserved bidding was not reached. Upon this, it was settled that a sale with sealed tenders should be attempted. There were two candidates; one offered £36,500, the other £34,000. On the 8th of February, the chief clerk found in favour of the higher sum. On the 12th, the certificate was signed and approved by the Vice-Chancellor; but on the 11th, the day previous, a summons had been taken out by the person who tendered the lowest sum, i.e., £34,000, and upon the hearing, he having then proposed to give £38,000, was declared the purchaser. It must be understood that he undertook to replace the stock which had been sold out for the purpose of fulfilling the contract for £36,500. From this decision, the original pur-

chaser appealed. He did not dispute the power of the court to open the biddings, had the sale been carried on by auction, but he said that this was a sale by private contract. In fact, an opportunity was afforded for the court to escape from the principle of destroying the good faith of an accomplished contract, by likening it, as it really was, to the matter of a private transaction. Not so was the opinion of the court. They did not even hear the counsel for the new claimant. They dwelt upon the condition of sale, that it was to take place with the sanction of the Vice-Chancellor, and they held that all the incidents of days must apply as in the case of an auction. Of course, there being one day short, there was, in their view, time to disturb the certificate. But Lord J. Knight Bruce, who had on the former occasion declined to give costs, here said, "I concur with regret. Mr. Barlow's costs of the appeal ought to be provided for;" and they were immediately promised under an arrangement. (This case was confirmed by the House of Lords.) Now it seems rather strange that the Lord Justice, who had previously withheld costs from a party who was truly and justly successful, should here have recommended the payment of them to one who was unsuccessful. The judge must have thought it inequitable that a purchaser who by what was in reality a private contract, had offered more than £30,000 for an estate, should have been suddenly supplanted by a buyer who had deliberately sent, in writing, to the proper authority, the amount which he was prepared to give. It is presumed that the successful appellee in this case might, in his turn, have been deprived of his bargain by the tempting tender of £40,000 by another aspirant. Particular reference was made in *Osborne* v. *Foreman* to a decision of the Vice-Chancellor Wood, then recently delivered by that judge. Lord Justice Turner seemed anxious to avoid a collision between the authorities, or to establish a diversity of opinion between himself and the very eminent person just mentioned. "But," said the Lord Justice, "this case, in the opinion of their lordships, turned on different grounds from those in that case." (25 L. J., 341.)

Now that case was *Millican* v. *Vanderplank* (11 Hare, 136); that was also a case of private contract, but there were no sealed tenders, and the ground upon which it was sought to be distinguished was, no doubt, because the purchaser had entered upon the property and expended money upon it, and had incurred liabilities in respect of it, not merely at his own instance, but with the approval and acquiescence of all the parties interested. Both vendor and purchaser had so agreed as to prevent their being again placed respectively in their original positions. So far there seems to be a fair distinction. But the Vice-Chancellor laid down the principle rather more broadly. For he said that, "When the master has approved of a sale by contract in the presence of the parties, no stranger can intervene to prevent the confirmation of the report; nor will the sale be disturbed by the court on the mere ground that a larger price has been offered subsequently, and before such confirmation, unless there be some error or miscarriage in the proceedings, or the contract price be grossly inadequate." These remarks are of a very strong character. They point at a clear distinction between the sale by auction and by private contract, and can hardly be reconciled with the opinions expressed in *Osborne* v. *Foreman*, however ingeniously it was endeavoured upon that occasion to preserve the alliance. The only argument which has been advanced assumes a distinction between a sale with sealed tenders and one by private contract. It is not necessary to discuss the point here, because we pretend to higher ground, the absolute extinction of this equity custom.

Notwithstanding all these cases, you are not to suppose that the tide of judicial opinion has been uniform in favour of the custom. Lord Thurlow declared that he would not open at all after confirmation of the report. (3 Bro. C. C. 475, *Scott* v. *Nesbit*.) Mr. Maddock in his chancery practice, asserts on the authority of an anonymous MS., that "By some judges it has been thought that the permission to open biddings does more harm than good." (Vol. 2, p. 655.) Still it is but fair to say that he adds; "by others, that the right to open biddings should not be so much restrained as it is" (ibid.), and he cites Vice-Chancellor Leach as his authority, from an MS. (Vol. 2, p. 655.) But Lord Eldon, whatever his doubts, which have descended to posterity, may have been, was strong upon this point.

In 1809, his lordship remarked upon the bad effect of opening biddings in general, from the uncertainty attending purchasers in this court. (In *Preston* v. *Barker*, 16 Ves. 160.) Again, in 1820, he said, "I believe that the rule of opening the biddings, which was intended to protect, has frequently been very pernicious to the interests of the suitors in this court, and that their estates have sometimes sold for next to nothing in consequence of it. (*Thornhill* v. *Thornhill*, 2 Jac. & W. 348.)

"For many years," he said again in 1822, "that I have been here, I have heard the practice of opening biddings lamented, and I cannot therefore account for it having continued a rule of the court, except upon a notion which I believe to be well founded, that there is in general more real wisdom in adhering to the old practice than in adopting new rules." (In *Tyndale* v. *Warre*, Jac. 526) Here the groundless apprehension of change was exhibited in high relief by the great lawyer. It was in a case indeed, where the appellant was present at the sale, but the observations were general. If it were necessary to make a change he would consult the Master of the Rolls and the Vice-Chancellor. Again, in 1823, Lord Eldon said, "During a period of nearly half a century which I have passed in this court, and in which Lord Apsley, Lord Thurlow, the Lords Commissioners, with Lord Loughborough at their head, have presided here, I have heard one and all of them lament that the practice of opening biddings was ever introduced. I confess that I have great doubts myself upon the subject; but after a practice so long established, it is not for me to disturb it." (In *Williams* v. *Attenborough*, Turn. & Russ. 75.) Lord Redesdale likewise observed in his court, "It is a general complaint that estates sold under decrees of the court go at considerable under-value; the cause of this is the trouble purchasers are put to, in completing their purchases. If greater strictness were preserved in opening the biddings, it would have the effect of producing better sales." (1 Sch. & L. 350.)

Lord Cranworth also made an ominous remark in *Barlow* v. *Osborne*, (4 Jur. 367.) which, had he been quite content with the existing practice, he might have foreborne. "These are all discussions which are proper to be addressed to the Legislature which has the power of altering the law;" (Id. 358) and again, "it does seem to me most unreasonable that a vendor should, in cases of this kind, when his property is sold under a decree of the court, be protected at both ends, as it were, both before and after the purchase is made. It seems to me to furnish the strongest grounds for thinking that a general order should be issued by the Court of Chancery for the purpose of altering the present practice, (Id. 369.) And in 1817, Macdonald, C. B., thus expressed himself: "If one who has given a fair price and is confirmed purchaser before the master, is liable at the distance of several months, and after he has arranged his affairs upon the faith of the purchase, to have it set aside, upon the mere circumstance of another person offering a larger price, it must necessarily affect all sales under the authority of the court, by deterring purchasers from bidding. It is, thereupon, the general interest of the suitors to discourage the opening of biddings, unless upon peculiar circumstances in the first sale. As no such circumstances appear in this case, the order cannot be granted." (In *Boyer* v. *Blackwell*, 3 Anstr. 657)

There is another principle not a little important, when we come to investigate the subject. The court will suffer a third sale, if there be found a candidate equal to the mark, (Bro. Ch. Ca. 475, *Scott* v. *Nesbit*), and upon an application by the same person. (8 Beav. 352, *Walrond* v. *Walrond*, see the cases of Colliery Shares, 8 Ves. 502, *Wren* v. *Kirton*.) However, in ordinary cases, the sale will be revived. £1,050 were bid, and there was an order to open the biddings upon a deposit of £300. The second sale took place, and £1,338 were bid; but another offer of £160 was made by the same person who had opened the biddings. The Lord Chancellor said he remembered no such application, but as the purchaser did not appear to object he made the order. (16 Ves. 140; *Preston* v. *Barker*.)

I may just mention as matter of legal history, that when a buyer has taken several lots, and as to one of these, the biddings are opened, it is the rule to give him the option of retiring from the remainder. Macdonald, C.B., thought this a reasonable request; (3 Anstr., 656, *Boyer* v. *Blackwell*) but the Vice-Chancellor (Leach) upon a subsequent occasion made a distinction between lots purchased before the lots which are the subject of the application and those after. He said, "Where a person became the purchaser of a subsequent lot, in consequence of his being declared the best bidder of a prior lot it was reasonable that he should have the option of retaining or retiring from the subsequent lot. (1 Sim. & Stu., 386, *Price* v. *Price*.) In another case, the same Vice-Chancellor required an affidavit from the purchaser "that he had bid for the lot in consequence of having been declared the best bidder for the prior lot." (Ibid. *Fielder* v. *Fielder*. See 4 Madd. 227. *Roffey* v. *Shallcross*, and note (C.) there. As to timber, see 6 Sim. 380. *Bates* v. *Bonner*, 10 per cent. advance; and for other cases, Dart on Vendors, p. 756.)

It is obvious that, from the details and observations which have been submitted to the society, the object intended in these papers is to prepare the way for an Act of Parliament, or it may be a rule of the courts to assimilate the sales directed by the Court of Chancery with other contracts between buyer and seller. It seems better to return to that ordinary commercial dealing which has so long established good faith and right assurance between man and man. Undoubtedly, the equity judges have endeavoured to preserve, as far as possible, the fair balance between buyers and sellers; but of a practice what can be said commendatory, when the great oracles which have the administration of it are by no means agreed as to the propriety of its continuance? No sooner will the Court of Chancery forbear or be restrained from this method of conducting sales, than the same confidence will arise in the market of that court which obtains in the great market of the world.

STREET RAILWAY COMPANY.

A Bill with this title is quietly making its way through the House of Commons in the guise of a "private Bill." But the measure is one of such great and general importance as to make it only fair and proper that it should be brought before Parliament in its true character of a "public Bill."

It proposes to authorise the company to lay down rails along the surface of such of the streets of the metropolis, or of any other towns in the United Kingdom, as shall be selected with the consent of the parties having the controul or the duty of directing the repair of such streets, and to give to the company the exclusive right of using carriages with flange wheels on such rails, reserving to the public the right of using the rails and plates with carriages having common road wheels.

The general character of the measure, affecting as it does the streets of the whole kingdom, seems imperatively to demand that it should be treated as a public Bill, especially as this general nature of the Bill prevents the standing orders, which require notice to parties affected and provide other securities, being applicable to it.

The Bill stands for the second reading on Monday next.

INCORPORATED LAW SOCIETY, U.K.

The following is a list of the lecturers appointed by the Incorporated Law Society up to the present year:—

Conveyancing.—SAMUEL F. T. WILDE, Esq. 1833 to 1843.

Common Law.—CHARLES EDWARD DODD, Esq. 1833 to 1835.

Equity.—HENRY NELSON COLERIDGE, Esq. 1833 to 1835.

Public Records.—STACEY GRIMALDI, Esq. (A member of the Society). 1834.

Common Law.—DAVID JARDINE, Esq. (afterwards police magistrate) 1835 to 1836.

Equity.—EDWARD J. LLOYD, Esq. (now Queen's counsel) 1835 to 1838.

Common Law.—JAMES MANNING, Esq. (now Queen's ancient serjeant) 1836 to 1837.

Common Law.—JOHN W. SMITH, Esq. (author of "Leading Cases," &c.) 1837 to 1843.

Equity.—SPENCER H. WALPOLE, Esq. (late Home Secretary of State) 1838 to 184 .

Lord Bacon's Works.—BASIL MONTAGU, Esq. (afterwards Q.C.) 1838.

Equity.—JOHN ADAMS, Esq. 1842 to 1845.

Conveyancing.—CAYLEY SHADWELL, Esq. 1843 to 1846.

Common Law.—ARCHIBALD JOHN STEPHENS, Esq. (now Recorder of Winchester, Q.C.) 1843 to 1847.

Equity.—SAMUEL MILLER, Esq. 1845 to 1848.

Law of Nations.—JOHN T. GRAVES, Esq. 1845.

Common Law.—JAMES P. WILDE, Esq. (now Baron Wilde) 1846 to 1847.

Conveyancing.—FIELDING NALDER, Esq. 1846 to 1849.

Common Law.—J. ALLEYNE MAYNARD, Esq. 1847 to 1850.

Equity.—RICHARD JEBB, Esq. 1848 to 1851.

Moral, Social, and Professional duties of Attorneys and Solicitors.—SAMUEL WARREN, Esq. (Q.C., Recorder of Hull, now Master in Lunacy) 1848.

Conveyancing.—EDWARD KENT KARSLAKE, Esq. 1849 to 1851.

Common Law.—HENRY JOHN HODGSON, Esq. (now one of the Masters of the Queen's Bench) 1850 to 1852.

Conveyancing.—REGINALD WALPOLE, Esq. 1851 to 1853.

Equity.—J. C. CONYBEARE, Esq. 1851 to 1853.

Common Law.—RICHARD GARTH, Esq. 1852 to 1854.

Conveyancing.—JOHN WILSON, Esq. 1853 to 1854.

Equity.—MARTIN A. SHEE, Esq. 1853 to 1855.

Conveyancing,—RICHARD BAGGALLAY, Esq. 1854 to 1856.

Common Law.—CHARLES EDWARD POLLOCK, Esq. 1854 to 1855.

Equity.—J. T. HUMPHREY, Esq. 1855 to 1857.

Common Law.—R. MALCOLM KERR, Esq. (now judge of the Sheriff's Court, London) 1855 to 1857.

Conveyancing.—J. PEARSE PEACHEY, Esq. 1856 to 1858.

Equity.—F. O. HAYNES, Esq. 1857 to 1859.

Common Law.—R. EDWARD TURNER, Esq. 1857 to 1859.

Conveyancing.—J. W. SMITH, Esq. 1858 to 1859.

Conveyancing.—F. J. TURNER, Esq. 1859 to 1861.

Equity.—G. WIRGMAN HEMMING, Esq. 1859 to 1861.

Common Law.—F. MEADOWS WHITE, Esq. 1859 to 1861.

Jurisdiction and Practice of Admiralty Court.—JOHN MORRIS, Esq. (a member of the society) 1859.

Public Companies.

BILLS IN PARLIAMENT

For the Formation of New Lines of Railways in England and Wales.

The standing orders of both Houses of Parliament have been complied with in the following cases:—

CONWAY AND LLANRWST.—Capital, £110,000.

The Select Committee have declared that the standing orders may be dispensed with in the following cases:—

ANCHOLME.
COLNE VALLEY AND HALSTEAD.
EASTERN COUNTIES.
GRIMSBY.
LLANIDLOES AND NEWTOWN.
LONDON, BUCKS, AND WEST MIDLAND JUNCTION.
SOUTH YORKSHIRE (KEADBY EXTENSION).
TRENT.

REPORTS AND MEETINGS.

BRISTOL AND EXETER RAILWAY.

The directors, by their report, recommend a dividend at the rate of 5½ per cent. per annum for the last half-year, carrying a balance of £2,991 to the next account.

EASTERN COUNTIES RAILWAY.

The directors of this company have declared a dividend of £1 3*s.* 9*d.* per cent. for the half-year, being at the rate of £2 7*s.* 6*d.* per annum on the ordinary share capital of the company, leaving £5,620 to be carried to the next account.

EQUITY AND LAW LIFE ASSURANCE SOCIETY.

This society held its sixteenth annual general meeting yesterday. During the past year 169 policies of assurance have been effected, producing in new premiums £7,407. The income of the society now amounts to about £60,000, and the funds to £274,489 11*s.* 2*d.* The number of policies in force on the 31st December last was 1,425, amounting, exclusive of bonuses and additions, to £1,533,707. The report was unanimously adopted.

GREAT NORTHERN RAILWAY.

The directors of this company will recommend at the ensuing meeting that the following dividends be declared, viz.:—At the rate of £6 7*s.* 6*d.* per cent. per annum on the original stock, £3 per cent. on the B stock, and £3 7*s.* 6*d.* per cent. on the A stock, leaving £965 to be carried forward.

GREAT SOUTHERN AND WESTERN RAILWAY.

At the half-yearly meeting of this company, held in Dublin

on the 16th instant, a dividend at the rate of £5 per cent. per annum was declared.

GREAT WESTERN RAILWAY.

At the half-yearly meeting of this company, held on the 15th instant, the Earl of Shelburne in the chair, a dividend of 3½ per cent. per annum on the Consolidated Stock of the company was declared, and the retiring directors were unanimously re-elected.

GREAT WESTERN AND BRENTFORD RAILWAY.

At the half-yearly meeting of this company held on the 20th inst. a dividend of 5 per cent. per annum on the preference shares, and of two per cent. per annum on the ordinary shares was declared, leaving a balance of £567 to be carried forward to the next account.

HULL AND HOLDERNESS RAILWAY.

The half-yearly meeting of this company was held on the 7th inst., and a dividend of 3½ per cent. was declared. The chairman stated that there would be only two more dividends at that rate. All subsequent dividends would be at the rate of £4 per cent. per annum.

LONDON AND BLACKWALL RAILWAY.

The half-yearly meeting of this company was held on the 19th inst. The report of the directors recommending a dividend at the rate of £4 per cent. per annum for the last half year on the consolidated stock was adopted. The dividend became payable on the 20th inst.

LONDON AND NORTH WESTERN RAILWAY.

At the half-yearly meeting of this company held yesterday, a dividend of 5½ per cent. was declared.

MARYPORT AND CARLISLE RAILWAY.

At the half-yearly meeting of this company held on the 20th inst. a dividend of 35s. on original £50 shares, and on other shares in proportion, was declared; being at the rate of £7 per cent. per annum.

MIDLAND RAILWAY.

At the half-yearly meeting of this company, held on the 15th inst., a dividend of 7 per cent. was declared on the old stock; the dividend in the usual proportion on the Birmingham and Derby stock, and on the other preferential and consolidated stocks of the company.

Resolutions were also passed for the consolidation of some of the smaller stocks, and a vote of £22,000 was taken for works.

NORFOLK RAILWAY.

At the meeting to be held on the 26th inst. the directors will recommend a dividend at the rate of £1 17*s.* 6*d.* per cent. for the last half-year, being at the rate of £3 15*s.* per cent. per annum.

NOTTINGHAM AND GRANTHAM RAILWAY.

The report of the directors states that the remainder of the share capital had been called up, and the mortgage debt reduced to £52,915, and before the next meeting would be discharged. The directors propose a dividend of 3*s.* 6*d.* per share payable on the 7th of March, making 7*s.* for the year as against 6*s.* 6*d.* for the year 1859.

SALISBURY AND YEOVIL RAILWAY.

The directors' report states that the balance available for dividend was £6,646, out of which they recommend a dividend at the rate of £4 per cent. per annum, should be declared. This will leave a balance of £246, which, with the balance in hand on 1st July last, makes a total of £3,560 to be carried forward to the next half-year.

SOUTHAMPTON DOCKS COMPANY.

The directors recommend a dividend of £1 10*s.* per cent. for the last half year. This, with the dividend paid for the previous half year, will make £3 10*s.* per cent. for the year 1860.

SOUTH EASTERN RAILWAY COMPANY.

At the ensuing half-yearly meeting on the 28th inst., the directors will recommend a dividend of 18*s.* on each £30 stock, being at the rate of 6 per cent. per annum.

SOUTH WALES RAILWAY.

The directors, by their report, recommend that a dividend be declared for the last half year at the rate of £3 per cent. per annum, leaving a balance of £2,310 to be carried forward.

SOUTH WESTERN STEAM NAVIGATION COMPANY.

At the half-yearly meeting of this company, held on the 14th inst., a dividend was declared at the rate of £5 per cent per annum.

A resolution to convert the capital of the company into 4½ per cent. preferential stock of the London and South Western Railway Company was carried unanimously.

SOUTH YORKSHIRE RAILWAY.

After deducting the interest on preference shares the directors recommended a dividend at the rate of 4½ per cent. per annum on ordinary capital.

STOCKPORT AND DISLEY RAILWAY.

The report of the directors states that the traffic receipts show an increase of 15 per cent. over those of 1859, and recommends a dividend of 2½ per cent. per annum.

SUBMARINE TELEGRAPH COMPANY.

A dividend at the rate of £5 per cent. per annum was declared at the recent half-yearly meeting, and resolutions were passed authorising the conversion of capital fully paid up into stock.

TAFF VALE RAILWAY.

The report of the directors states that the traffic receipts for the last half year are very satisfactory, and recommends a dividend at the rate of £9 per cent. per annum to be declared.

ULVERSTONE AND LANCASTER RAILWAY.

The directors recommend a dividend at the rate of £5 per cent. per annum for the last half-year, leaving a balance of £3,000.

VALE OF NEATH RAILWAY.

The report of the directors recommends a dividend at the rate of 2½ per cent. per annum for the last half-year. This will leave a balance of £1,180 to be carried forward to the next half-year.

VICTORIA STATION AND PIMLICO RAILWAY.

The half-yearly meeting of this company was held on the 20th inst. In moving the adoption of the directors' report, the chairman stated that it was probable a small dividend would be declared at the next half-yearly meeting. He estimated that the dividend would average up to 1867 about 6 per cent. on the ordinary shares, and that after that year it would be larger.

WEST MIDLAND RAILWAY.

The half-yearly meeting of this company was held on the 14th inst.

The chairman stated there were thirty Bills before Parliament in which the company were more or less interested. A line called the Coast of Wales Railway had been projected and the directors had arranged, subject to the sanction of the proprietors, to work it at 52½ per cent. on the traffic.

The report of the directors was confirmed, and dividends declared.

WHITEHAVEN JUNCTION RAILWAY.

The directors recommend a dividend at the rate of 8 per cent. for the half-year ending 31st Dec. last.

WHITEHAVEN AND FURNESS RAILWAY.

The directors propose that a dividend for the half year ending 31st Dec. last, at the rate of 4 per cent. per annum shall be declared. This is an excess of 1½ per cent. over that declared for the corresponding period of the previous year.

University Intelligence.

CAMBRIDGE.

Feb, 16.—The subjects of examination for the Chancellor's Legal Medal for the year 1862 are:—

Roman Law.—The Jus Familiare, as exhibited in McKeldey's Systema Juris Romani, Lib. III., with special reference to the original Roman sources.

English Law.—Rules of Evidence and Forensic Practice "Best on Evidence" (3rd edition), Books III. and IV. "Smith on Contracts" (last edition).

English History.—From the meeting of the Long Parliament to the death of Charles II. Hallam's Constitutional History, with special reference to the statutes therein cited.

State trial: Algernon Sidney. (State trials, Vol. IX.)

International Law.—Definitions, Sources, and Subjects of International Law. International Rights of States, in their Pacific Relations. Wheaton's Elements, Parts I. and III.

Law Students' Journal.

LAW LECTURES AT THE INCORPORATED LAW SOCIETY.

Mr. FREDERICK MEADOWS WHITE, on Common Law and Mercantile Law, Monday, February 25.

Mr. FREDERICK JOHN TURNER, on Conveyancing, Friday, March 1.

Court Papers.

Court for Divorce and Matrimonial Causes.

The sittings of the Court for Divorce and Matrimonial Causes are postponed until Monday, the 25th of February, 1861.

Divorce Registry, February 20, 1861.

Births, Marriages, and Deaths.

BIRTHS.

CROPPER—On Feb. 19, at Liverpool, the wife of Wm. Cropper, Esq., Solicitor, of a son.

INDERWICK—On Feb. 18, the wife of Frederic Andrew Inderwick, Esq., Barrister-at-law, of a daughter.

LUND—On Feb. 19, the wife of Henry Lund, Esq., of Lincoln's-inn, Barrister-at-Law, of a son.

MIDDLETON—On Feb. 17, the wife of Thomas A. Middleton, Esq., of Bridgend, Glamorganshire, Solicitor, of a son.

RUSSELL—On Feb. 19, the wife of Charles Russell, Esq., Barrister-at-Law, of a son.

MARRIAGES.

PASSMAN—CLIFT—On Feb. 11, at Warwick, H. C. Passman, Esq., Solicitor, of that borough, to Sarah, daughter of Joseph Clift, Esq., of Forebridge Villa, Stafford.

POLLOCK—BAILEY—On Feb. 21, Arthur Julius Pollock, Esq., M.D., son of the Right Hon. the Lord Chief Baron, to Ellen, daughter of the late Charles Bailey, Esq., of Lee Abbey, Lynton, North Devon.

RITCHIE—FAWNS—On Dec. 20, at Launceston, Tasmania, William Ritchie, Esq., Barrister-at-Law, to Margaret, daughter of John Fawns, Esq., J.P.

DEATHS.

GUMMER—On Feb. 16, at Chester, aged 41, Stephen Henry Gummer, Esq., Solicitor, son of the late Colonel Stephen Stone Gummer, of the Madras Army.

HALL—On Feb. 18, George Hall, Esq., of 11, New Boswell-court, Lincoln's-inn, Solicitor, aged 65.

PAWLE—On Feb. 14, Margaret, the wife of J. C. Pawle, Esq., of Newton, and daughter of the late William Ireland Newman, Esq., of Walton-hill, Tewkesbury.

PIGEON—On Feb. 13, at Clifton Down, aged 5 months, Walter Kemball, infant son of R. W. Pigeon, Esq., Solicitor.

SECKER—On Feb. 20, at Essex-court, Temple, Isaac Onslow Secker, Esq., in his 63rd year.

TEMPLE—On Feb. 15, at Russell-square, Sarah, the wife of Christopher Temple, Esq., Q.C.

WATERS—On Feb. 18, at Hastings, Thomas Waters, Esq., clerk of the peace for the city of Worcester, aged 48.

WILTSHIRE—On Feb. 16, in her 37th year, Sarah Elizabeth, wife of Robert Wiltshire, of 26, Park-crescent, Stockwell, Solicitor.

London Gazettes.

Windings-up of Joint Stock Companies.

LIMITED IN BANKRUPTCY.

FRIDAY, Feb. 22, 1861.

AUSTRALASIAN LAND AND EMIGRATION COMPANY (LIMITED).—Commissioner Goulburn will on March 11, at 1, Basinghall-street, settle the list of contributories of this company.

MARYLEBONE GAS CONSUMERS COMPANY (LIMITED).—Creditors to prove their claims on March 8, at 1; Basinghall-street, before Commissioner Holroyd. Same time the commissioner will settle the list of contributories.

Creditors under 22 & 23 Vict. cap. 35.

Last Day of Claim.

TUESDAY, Feb. 19, 1861.

CUNNINGHAME, ANN, Mrs., Widow, 18, Camden-place, Bath. Gibbs, Solicitor, 4, Northumberland-buildings, Queen-square, Bath. May 1.

FIRTH, GEORGE, Iron Merchant, formerly of Leeds, lately residing at Methley, Yorkshire. Upton & Clapham, Solicitors, Leeds. April 1.

JOHNELL, RICHARD PAUL, Sir, Baronet, Portland-place, Middlesex, and Sall-park, Norfolk. Stevens & Satchell, Solicitors, 6, Queen-street, Cheapside, London. April 2.

LEARY, THOMAS, Gent., Waterloo, Liverpool. Marsden, Solicitor, 5, Old Churchyard, Liverpool. April 6.

PHILLIPS, WILLIAM, Mr., Farmer & Grazier, Badby, Northamptonshire. Barnett & Son, Solicitors, Daventry. March 11.

SHERE, RICHARD, Commercial Traveller, 10, Cavendish-road, Wandsworth-road, Surrey. Hick, Solicitor, 13, Copthal-court, London. March 16.

SMITH, RICHARD, Gent., Witney, Oxfordshire. C. J. Witney, Wine Merchant, Executor, Witney, Oxfordshire. March 30.

TAYLOR, WILLIAM, formerly of the Home Office, Whitehall, late of 5, Lansdowne-circus, Lansdowne-road, South Lambeth, Surrey. G. Taylor, Executor, Somerset-villa, Loughborough-park, Brixton, Surrey. March 31.

TURNER, EDWARD, Victualler, South Wharf-road, Paddington, and Hercules-terrace, Holloway-road. Bartley, Southwood, & Bartley, Solicitors, 30, Somerset-street, Portman-square. March 25.

FRIDAY, Feb. 22, 1861.

ACTON, ALICE, Butcher, Liverpool. Banner, Solicitor, 24, North John street, Liverpool. May 1.

APPLEGARTH, GEORGE, Farmer, Beaumont-hill, Durham. W. & W. D. Trotter, Solicitors, Bishop Auckland, Durham. April 1.

BRIGGS, Right Rev. JOHN, Doctor of Divinity, York. Walker, Solicitor, York. April 8.

EVANS, WILLIAM, Oil & Colour Manufacturer, Bristol. H. Britain & Sons, Solicitors, Albion Chambers, Bristol. April 20.

FAMING, ROGER, Gent., Helston, Cornwall. Rogers & Sons, Solicitors, Helston. May 1.

GOODMAN, WILLIAM, Gent., Great Brick-hill, Buckinghamshire. Willis Solicitor, Leighton Buzzard. April 6.

HALLIWELL, JOHN, Furniture Dealer, 91, London-road, Manchester. Simpson, Solicitor, 33, South King-street, Manchester. April 26.

HONER, JAMES, Miller, Perbright, Surrey. Hockley & Russell, Solicitors, Guildford. May 31.

HOWCRAFT, MARY, Spinster, York. Walker, Solicitor, York. April 30.

NICHOLAS, ELIZABETH, Spinster, Sandgate, Kent. Harrison, Solicitor, Folkestone, Kent. April 3.

REES, MARY, Widow, George Town, Merthyr Tydfil, Glamorganshire, and of Brin Tirion, Vaynor, Brecconshire. Llewellin, Solicitor, Newport, Monmouthshire. April 39.

SHIELDS, JAMES, Engine Driver, Canney-hill, Durham. W. & W. D. Trotter, Solicitors, Bishop Auckland, Durham, April 1.

SNEED, JAMES, Cheesemonger, Sun-street, Bishopgate, London. Davies, Solicitor, Ross, Herefordshire. April 12.

STITT, JAMES, Esq., Iron Merchant, Liverpool. Jones, Solicitor, 56, Castle-street, Liverpool. May 25.

WALKER, MARY, Widow, Upper Stamford-street, Blackfriars-road, Surrey. Johnson & Coote, Solicitors, 2, Great Knight Rider-street, Doctors' Commons, and 5, Gray's-inn-square. April 10.

WALLER, ANN, Widow, King-street, Woolwich, Kent. Pearce, Solicitor, 19, Rectory-place, Woolwich. July 1.

WILLIAMS, FANNY, Widow, Leamington Priors, Warwickshire. Field, Solicitor, Leamington. April 30.

WISKER, MATTHIAS, Optician, York. Walker, Solicitor, York. April 6.

WOOD, ALEXANDER, Gent., Epsom, Surrey. Guy & Wilkinson, Solicitors, 8, Cannon-row, Westminster. March 25.

Creditors under Estates in Chancery.

Last Day of Proof.

TUESDAY, Feb. 19, 1861.

BUCKLEY, ALICE, Widow, Woodhouse, near Delph, Saddleworth, Yorkshire. Wareing *v.* Buckley, V. C. Stuart. March 20.

BURTON, THOMAS, Esq., Great Yarmouth, Norfolk. White *v.* Steward, M. R. March 11.

HANNAWAY, THOMAS, Linen Dealer, Leeds. Wallis *v.* Foster, V. C. Kindersley. March 21.

HUTCHINSON, HENRY CLARKE, Esq., Welham, Clarborough, Notts. Hutchinson *v.* Smith, V. C. Wood. March 16.

PERCIVAL, JOHN, Bull Inn, Tanner's-end, Edmonton. Fryer *v.* Mortimore, V. C. Wood. March 6.

(County Palatine of Lancaster).

FROST, JANE (wife of John Frost, Cotton Spinner, Manchester, county palatine of Lancaster). Registrar office, 4, Norfolk-street, Manchester. March 19.

FRIDAY, Feb. 22, 1861.

BEDFORD, HENRY, Gent., 47, Albany-street, Regent's-park, Middlesex, and of 4, Gray's-inn-square. Watkins *v.* Lane, V.C. Stuart. March 14.

BELL, PETER, Surgeon, M. D., Wolverhampton, Staffordshire. Bell *v.* Bell, M.R. April 10.

BERRINGTON, THOMAS, Gent., Croydon, Surrey. Overton *v.* Crittall, M.R. March 12.

CHERMSIDE, ALEXANDER, Knight & Doctor of Medicine, Beaumont-street, Oxford. Watson *v.* Chermside, V.C. Kindersley. March 20.

FITZ CLARENCE, Right Hon. Lord FREDERICK, late Commander-in-Chief for the Bombay Army, East Indies, Etall Hall, Northumberland. Lady Augusta Fitz Clarence *v.* The Earl of Erroll, V.C. Stuart. June 17.

GREEN, JAMES, Gent., Leeds. Tootal *v.* Dickinson, V.C. Stuart. March 27.

GWYN, THOMAS GABRIEL LEONARD CAREW, Esq., 10, Thurloe-place, Brompton, Middlesex, afterwards of Jermyn-street, St. James's, Westminster, and late of Buenos Ayres, South America. De Gwyn *v.* Pollock, V.C. Kindersley. March 27.

LAWTON, SARAH, Spinster, Barnsley, Yorkshire. Lawton *v.* Ownsworth, M.R. March 18.

MARSH, EDWARD, Dealer in Watchmakers' Tools, Gloucester-street, Clerkenwell, Middlesex. Doward *v.* Marsh, M.R. March 13.

NORTH, JOHN, Town Carter, Brighton, Sussex. Champion *v.* North, V.C. Stuart. March 23.

(County Palatine of Lancaster.)

FRIDAY, Feb. 22, 1861.

HALL, JOHN, Factory Overlooker, Ashton-under-Lyne. Taylor *v.* Hall Registrar for District, 4, Norfolk-street, Manchester. March 19.

Assignments for Benefit of Creditors.

TUESDAY, Feb. 19, 1861.

ALLENBY, RICHARD, Fellmonger, Horncastle, Lincolnshire. *Sol.* Tweed Horncastle. Feb. 4.

ASHDOWN, JOHN, Miller, North-street, Hellingly, Sussex. *Sol.* Sinnock, Hailsham. Jan. 23.

COLEBROOK, CHARLES CORNELIUS. Grocer, Leeds. *Sol.* Goodwin, Maidstone. Jan. 24.

COOPER, JAMES, Miller, Upper Mill, Loughborough, Leicestershire. *Sol.* Giles, Loughborough. Feb. 9.

GUNNELL, WILLIAM, & JOHN BROWNE, Biscuit Manufacturers, Portsea. *Sols.* H. & R. W. Ford, 170, Queen-street, Portsea. Feb. 6.

GUY, WILLIAM, Draper, Banwell, Somersetshire. *Sol.* Wood, Bristol. Jan. 28.

JENNINGS, JOSEPH PICKLES, & FREDERICK SARLY STOTT, Ironfounders, Bradford. *Sols.* Terry & Watson, Market-street, Bradford. Feb. 9.

LACEY, JOSEPH FREDERICK, Draper, Winchester. *Sol.* Morris, 6, Old Jewry, London. Jan. 24.

MONK, GEORGE, Outfitter, Cardiff. *Sol.* Wood, Bristol. Feb. 4.

RICHARDSON, THOMAS WILLIAM, Contractor, Kingston-upon-Hull. *Sols.* Lee & Lee, Kingston-upon-Hull. Jan. 24.

WRIGHT, GEORGE, Builder, Ingtham, Kent. *Sol.* Goodwin, Maidstone. Jan. 24.

ZACHARY, GEORGE, & THOMAS WILLIAM RICHARDSON, Contractors, Kingston-upon-Hull. *Sols.* Lee & Lee, Kingston-upon-Hull. Jan. 24.

FRIDAY, Feb. 22, 1861.

BRIGGS, JOHN, Ovenden. *Sols.* Terry & Watson, Market-street, Bradford. Feb. 8.

CATLING, WILLIAM, General Dealer, Louth. *Sols.* Ingoldby & Bell, Louth. Feb. 15.

HOLLIER, OSMOND, Grocer, Wish-street, Southsea. *Sol.* Pearce, Portsea. Feb. 11.

HOWELL, JOHN, Farmer and Grazier, Windy-hill, Rudbaxton, Pembrokeshire. *Sol.* Davies, Spring-gardens, Haverfordwest. Feb. 1.

Bankrupts.

TUESDAY, Feb. 19, 1861.

BROWN, WILLIAM, Butcher, Marlborough. *Com.* Hill: March 4, and April 8, at 11; Bristol. *Off. Ass.* Acraman. *Sol.* Sedgwick, Marlborough, or Bevan, Girling, & Press, Bristol. *Pet.* Feb. 12.

BURRELL, RICHARD, & JOSEPH BURRELL, Warehousemen & Mantle Manufacturers, 1, Old Change, London. *Com.* Evans: March 1, at 12.30, and April 4, at 12; Basinghall-street. *Off. Ass.* Johnson. *Sol.* Jones, Sise-lane. *Pet.* Feb. 11.

BUTCHER, GEORGE, Boot and Shoe Manufacturer, 27, Prior-place, East-street, Old Kent-road, Surrey. *Com.* Holroyd: March 5, at 2.30; and April 9, at 12; Basinghall-street. *Off. Ass.* Edwards. *Sol.* Kent, 11 Cannon-street West, London. *Pet.* Feb. 16.

DARLINGTON, THOMAS, Innkeeper, Grinshill, Shrewsbury. *Com.* Sanders: March 1 & 22, at 11; Birmingham. *Off. Ass.* Kinnear. *Sols.* Kough, Shrewsbury, or Collis & Ure, Birmingham. *Pet.* Jan. 25.

DUNKLEY, BARTHOLOMEW FREDERICK, Grocer & Provision Dealer, Kettering, Northamptonshire. *Com.* Evans: Feb. 28, at 12.30; and March 28, at 1; Basinghall-street. *Off. Ass.* Johnson. *Sol.* Rawlins, Market Harborough. *Pet.* Feb. 18.

FINCH, THOMAS WILLIAM, Grocer & Farmer, Braithwell, Yorkshire. *Com.* West: March 2, and April 6, at 10; Sheffield. *Off. Ass.* Brewin. *Sols.* Chambers & Waterhouse, Sheffield. *Pet.* Feb. 16.

PADDY, RICHARD, Draper, 4, Amelia-place, Brompton, Middlesex. *Com.* Goulburn: March 1, and April 8, at 12; Basinghall-street. *Off. Ass.* Pennell. *Sol.* Jones, 15, Sise-lane, London. *Pet.* Feb. 15.

ROBY, MARTHA, Sauce Manufacturer, Leamington. *Com.* Sanders: March 4 & 25, at 11; Birmingham. *Off. Ass.* Kinnear. *Sol.* East, Birmingham. *Pet.* Feb. 18.

SMITH, ARTHUR, Engineer, Paragon-buildings, New Kent-road, Surrey. *Com.* Goulburn: Feb. 27, at 12; and April 8, at 1; Basinghall-street. *Off. Ass.* Pennell. *Sols.* Peek & Downing, 10, Basinghall-street, London. *Pet.* Feb. 11.

SMITH, JOHN AUGUSTUS GUSTAVUS, commonly known by the name of Augustus Smith, Auctioneer, 29, Basinghall-street, London. *Com.* Holroyd: March 5, at 3; and April 9, at 1; Basinghall-street. *Off. Ass.* Edwards. *Sol.* Poole, 58, Bartholomew-close, London. *Pet.* March 18.

THORNLEY, JAMES, Lace Dresser, Sneinton, Nottinghamshire. *Com.* Sanders: March 7, & March 21, at 11; Nottingham. *Off. Ass.* Harris. *Sol.* Hearnshaw, Castle-gate, Nottingham. *Pet.* Feb. 15.

FRIDAY, Feb. 22, 1861.

DAVIS, WILLIAM HENRY, Farmer & Market Gardener, Manor Farm, Ash, Surrey. *Com.* Goulburn: March 4, at 12, & 25, at 1; Basinghall-street. *Off. Ass.* Pennell. *Sol.* Vining, 2, Moorgate-street, London. *Pet.* Feb. 19.

DUTTON, JOHN, Grocer, Walsall, Staffordshire. *Com.* Sanders: March 7 & April 5, at 11; Birmingham. *Off. Ass.* Kinnear. *Sols.* Duignan & Ebsworth, Walsall. *Pet.* Feb. 12.

ELEY, ANDREW ROBERT, Upholsterer, 1, Chiswell-street, Middlesex. *Com.* Fane: March 6, at 12.30, and April 12, at 1; Basinghall-street. *Off. Ass.* Whitmore. *Sols.* George & Downing, 5, Sise-lane, Bucklersbury. *Pet.* Feb. 21.

FOWLER, WILLIAM, & THOMAS SANDERSON, Tea Merchants, Liverpool. *Com.* Perry: March 4 & 27, at 11; Liverpool. *Off. Ass.* Bird. *Sols.* Neal & Martin, Liverpool. *Pet.* Feb. 19.

GATES, HENRY, Chemist & Druggist, Louth, Lincolnshire. *Com.* Ayrton; March 6 & April 10, at 12; Kingston-upon-Hull. *Off. Ass.* Carrick. *Sols.* Ingolby & Bell, Louth, or Wells & Smith, Hull. *Pet.* Feb. 20.

JOHN, WILLIAM, Grocer & Draper, Pontypridd, Glamorganshire. *Com.* Hill: March 5 & April 9, at 11; Bristol. *Off. Ass.* Acraman. *Sols.* Abbot, Lucas, & Leonard, Albion-chambers, Bristol. *Pet.* Feb. 15.

JONES, THOMAS PUGH, Boot & Shoe Manufacturer, 108, Mill-street, Toxteth Park, Liverpool, and 106, Brownlow-hill, Liverpool, Lancashire. *Com.* Perry: March 4, and 27, at 11; Liverpool. *Off. Ass.* Turner. *Sols.* J. & H. Hindle, Bank-buildings, 41, Lord-street, Liverpool. *Pet.* Feb. 18.

LAVENDER, SAMUEL WILLIAM, Merchant, Cement Manufacturer, & Commission Agent, Liverpool. *Com.* Perry: March 4, at 12, and 27, at 11; Liverpool. *Off. Ass.* Morgan. *Sols.* Harris, 20, North John-street, Liverpool. *Pet.* Feb. 18.

NIXON, JAMES, Painter, House Decorator, Lincoln. *Com.* Ayrton: March 6, and April 10, at 12: Kingston-upon-Hull. *Off. Ass.* Carrick. *Sols.* Mason & Dale, Lincoln. *Pet.* Feb. 9.

PHILLIPS, DAVID, Grocer, Neath, Glamorganshire. *Com.* Hill: March 5, and April 9, at 11; Bristol. *Off. Ass.* Acraman. *Sols.* Bevan, Girling, & Press, Bristol. *Pet.* Feb. 14.

RANDLE, JOSEPH, Builder & Licensed Victualler, Coventry. *Com.* Sanders: March 7 & April 5, at 11; Birmingham. *Off. Ass.* Whitmore. *Sols.* James & Knight, Birmingham. *Pet.* Feb. 18.

SMITH, SAMUEL, Builder & Decorator, 37, Fish-street-hill, London. *Com.* Fane: March 6, at 12; and April 5, at 11.30; Basinghall-street. *Off. Ass.* Cannan. *Sol.* Preston, 15 Broad-street-buildings. *Pet.* Feb. 20.

STANDRING, ALEXANDER PETRIE, & CHARLES PETRIE STANDRING, Iron & Brass Founders, Rochdale (A. P. Standring & Brother). *Com.* Jaumett: March 5 & 27, at 12; Manchester. *Off. Ass.* Pott. *Sols.* Higson & Robinson, Cross-street, Manchester. *Pet.* Feb. 11.

TILLEY, RICHARD WALLINGTON, Draper, Weston-super-Mare, Somersetshire. *Com.* Hill: March 4, and April 8, at 11; Bristol. *Off. Ass.* Acraman. *Sols.* Bevan, Girling, & Press, Small-street, Bristol. *Pet.* Feb. 19.

WISE, CHARLES, Slate Merchant, Liverpool. *Com.* Perry: March 8 & 27, at 11; Liverpool. *Off. Ass.* Bird. *Sols.* Evans, Son, & Sandys, Liverpool. *Pet.* Feb. 18.

MEETINGS FOR PROOF OF DEBTS.

TUESDAY, Feb. 19, 1861.

ARMSTRONG, JOHN WILLIAM, Yarn Agent, Manchester. March, 15, at 12; Manchester.—CUTTS, HENRY GILBERT, Merchant & Commission Agent, formerly of 34, Southampton-street, Strand, now residing in France. March 12, at 12.30; Basinghall-street.—PENNY, ALFRED, Coal Merchant & Underwriter, 2, Richmond-villas, Holloway, Middlesex, late of Wharf-road, City-road, said county, and of Lloyd's Coffee-house, London. March 12, at 12; Basinghall-street.—RENDER, HENRY, Oil Merchant & Stearine Manufacturer, Manchester, and Newton-heath, Lancashire. March 15, at 12; Manchester.—SYCKLEMORE, THOMAS, Currier & Leather Seller, Gabriel's-hill, Maidstone. March, 13, at 12.30; Basinghall-street.—ZUCKER, LEWIS, Jeweller, 322, Oxford-street, Middlesex. March 13, at 12; Middlesex.

FRIDAY, Feb. 22, 1861.

BRIDGER, CHARLES, Builder, Haslemere, Surrey, and Coal Merchant, Lymhook, Hants. March 5, at 12; Basinghall-street.—BRYANT, WILLIAM, Tailor & Outfitter, Oxford-street, Middlesex. March 15, at 12; Basinghall-street.—COLLINS, CHARLES, & WILLIAM FREDERICK COLLINS, Drapers, 21, 22, & 23, Lower Sloane-street, Chelsea, Middlesex (C. & W. F. Collins). March 5, at 1; Basinghall-street.—COTTOM, JOHN, Boot & Shoe Maker, Smethwick, Staffordshire. Mar. 13, at 11; Birmingham.—DURRANT, ROBERT, & GEORGE BROCK, Tallow Chandlers & Soap Manufacturers, St. Michael & Coslany, Norwich. March 15, at 1; Basinghall-st.—HADWEN, ISAAC JAMES, & JAMES LAMONT MCGREGOR, Merchants, Liverpool. March 15, at 11; Liverpool.—HARRIS, THOMAS, & JOHN BURLS, Brewers, Eagle Brewery, Hampstead-road, Middlesex. March 15, at 11; Basinghall-street.—HEWITT, OWEN, Baker, Windsor. March 15, at 1; Basinghall-street.—HICKMAN, GEORGE HADEN, & ALFRED HICKMAN, Iron Manufacturers and Iron Dealers, Bilston, Staffordshire. March 21, at 11; Birmingham.—JULIAN, JOHN, Wholesale Milliner and Fancy Manufacturer, 9, Noble-street, Falcon-square, London. March 18, at 2; Basinghall-street.—MELLISS, ROBERT MCHAFFIE, Merchant, Manchester. March 20, at 12; Manchester. — MORTON, JOHN LOCKHART, Merchant, 8, Finch-lane, London. March 19, at 12; Basinghall-street.—MURDOCH, DAVID, Grocer & Provision Dealer, Liverpool. March 15, at 11; Liverpool.—ROUTLEDGE, SAMUEL Dyer, Huddersfield. March 19, at 11; Leeds.—STRACHAN, JOHN, Common Brewer, Newcastle-upon-Tyne. March 7, at 11; Newcastle-upon-Tyne.—VERNON, JOSEPH YARDLEY Draper, Stourbridge, Worcestershire. March 18, at 11; Birmingham. — WILLAN, ROBERT, Grocer & Flour Dealer, Glossop, Derbyshire. March 21, at 12; Manchester.